

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
DIVISION OF ALCOHOL BEVERAGES

EMERGENCY RULE ORDER OF THE DEPARTMENT OF REVENUE
AND DIVISION OF ALCOHOL BEVERAGES

EMERGENCY RULE ORDER

The Wisconsin Department of Revenue proposes an order to repeal and recreate Tax 7 and Tax 8 relating to alcohol beverage regulation and taxation.

The statement of scope for this rule, SS 009-24, was approved by the Governor on January 18, 2024, published in Register No. 813A3 on February 19, 2024, and approved by the Secretary of Revenue on March 7, 2024. This emergency rule was approved by the Governor on December 6, 2024.

FINDING OF EMERGENCY

2023 Wisconsin Act 73 is a complex and detailed change to alcohol beverage regulations not seen since 2011. The Act touches all tiers of the alcohol beverage industry. Many provisions impact both existing and new businesses. Many provisions of the Act have already come into effect and additional significant provisions come into effect on January 1, 2025. Due to the legislative review schedule, impact to existing businesses, and short time horizon for implementation of some items, emergency rulemaking is necessary to preserve public peace, health, safety, and welfare and to ensure tax compliance and regulatory fairness in the alcohol beverage industry.

ANALYSIS

Statutes interpreted: chs. 125 and 139, Stats.

Statutory authority: ss. 125.03 (1) (a), 139.08 (2), and 227.11 (2), Stats.

Explanation of agency authority:

Section 125.03 (1) (a), Stats., provides statutory rule-making authority as follows:

(a) The department, in furtherance of effective control, may promulgate rules consistent with this chapter and ch. 139.

2023 Wisconsin Act 73 amended sec. 125.03 (1) (a), Stats., above, effective March 1, 2024, as follows:

(a) The division may promulgate rules consistent with this chapter and ch. 139 to carry out the division's duties under this chapter.

Section 139.08 (2), Stats, provides statutory rule-making authority as follows:

(2) RULES. The secretary of revenue shall adopt rules necessary to carry out the secretary's duties under this chapter.

Section 227.11 (2), Stats., provides statutory rule-making authority as follows:

(a) "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute..."

(c) "Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules ..."

Related statute or rule: There are no other applicable statutes or rules.

Plain language analysis:

Structure: Under the current Wisconsin Administrative Code, Chapter Tax 7 contains all rules relating to the taxation and regulation of fermented malt beverages, and Chapter Tax 8 contains all rules relating to taxation and regulation of intoxicating liquor. This emergency rule separates the taxation and regulation of all alcohol beverages, regardless of type, due to the regulation and enforcement of alcohol beverages under ch. 125, Stats, occurring under the newly created Division of Alcohol Beverages pursuant to 2023 Act 73. The recreated Chapter Tax 7 in this emergency rule primarily relates to the regulation of alcohol beverages under ch. 125, Stats. and is promulgated and enforced by the Division of Alcohol Beverages. The recreated Chapter Tax 8 in this emergency rule primarily relates to the taxation of alcohol beverages and is promulgated and enforced by the Division of Income, Sales and Excises Taxes within the Department of Revenue. Both recreated chapters generally follow the structure and flow of information found in chapters 125 and 139 of the Wisconsin Statutes.

Removal of outdated and superseded rules: Several provisions of Tax 7 and 8 were outdated, superseded by 2023 Act 73, or redundant to rules or statute. Sections Tax 8.35, 8.61, and 8.66 have not been incorporated into this rule order.

New rules relating to alcohol beverage regulation: The following provisions of Tax 7 are new:

Tax 7.01 *Authority and Purpose* cites the statutory authority for the chapter and outlines the responsibilities of the Division of Alcohol Beverages.

Tax 7.03 *Background check fees* describes the purpose for background checks for alcohol beverage permit applicants and which members of the applicant business are subject to criminal history checks. Authority for the Division of Alcohol Beverages to charge these fees was granted in s. [125.04\(8m\)](#), Stats.

Tax 7.04 *Permits and fees* outlines expiration dates and amounts of permit fees for all alcohol beverage permits issued by the Division of Alcohol Beverages and when an application fee may be refunded.

Tax 7.06 *Responsible beverage server training course standards* establishes requirements that alcohol beverage server training courses must meet to be approved. This codifies the department's [long-standing guidance](#) into administrative code.

Tax 7.11 *Operators' permits* establishes the expiration date and application process for operator's permits issued by the Division of Alcohol Beverages.

Tax 7.12 *Alcohol beverage warehouse standards* establishes long-standing department practice for regulation of alcohol beverage warehouse permittees including who may hold the permit, authorized activities under the permit, and requirements of the premises.

Tax 7.13 *Permissible interests* provides definitions and processes necessary to administer s. [125.20](#), Stats, created in 2023 Wisconsin Act 73.

Tax 7.14 *Production agreements* provides clarification for producers engaging in production agreements under s. [125.21](#), Stats., including requirements for disclosure of agreements to the Division of Alcohol Beverages and examples for tax payment and reporting requirements specifically relating to contract production agreements with out-of-state recipe suppliers.

7.15 *Common carrier permit; shipments into state* clarifies that common carrier permits may be issued to one entity for multiple locations and requires that the monthly report be filed electronically.

7.16 *Fulfillment houses* provides the expiration for fulfillment house permits, requires that monthly reports be filed electronically, and that a permit is required for each location where wine will be shipped into Wisconsin.

7.17 *Full-service retail sales by producers* creates a requirement for producers to apply for on-and off-premises sales approval from the Division of Alcohol Beverages, requires that applications be made 15 days prior to desired commencement of full-service retail sales, explains how production volumes will be calculated and verified, provides guidance on when during the year a producer may apply for full-service retail sales, and provides several examples of how cumulative production volume is calculated if a legal business entity is merged, acquired, reorganized, or restructured. The section also creates a revocation, suspension, and refusal to renew process for these privileges, and creates invoice and recordkeeping requirements.

7.19 *Returns of alcohol beverages* codifies long-standing department [guidance](#) allowing retailers to make refunds to consumers, but not returns of the alcohol beverages. The rule also prohibits retailers from returning alcohol beverages from producers, distributors, and out-of-state shippers. The rule allows producers, distributors, and out-of-state shippers to replace alcohol beverages sold to retailers that were expired, spoiled, or recalled with identical brand, flavor, quantity, and size as long as the transaction is documented.

7.20 *Retail premises* codifies long-standing department [guidance](#) that specifies that a premises is fixed location describing land and buildings, that the licensee must have complete control over that premises, and that two premises separated by floor-to-ceiling walls, each with separate entrances, are not connecting premises.

New rules relating to alcohol beverage taxation: The following provisions of Chapter Tax 8 are new:

8.01 *Authority and purpose* cites statutory authority for the chapter and outlines the responsibility of the Department of Revenue.

8.08 *Contract production* explains when an out-of-state recipe supplier is responsible for reporting and paying Wisconsin excise tax as a party to a contract production agreement.

8.09 *Transfers of alcohol beverages between production premises and full-service retail outlet* confirms that alcohol beverages removed from the production premises for transfer to a full-service retail outlet is a removal for consumption or sale and Wisconsin excise tax is imposed.

Amended existing rules: Attached is a comparison chart of the changes the division and department have made to existing provisions of Tax 7 and 8.

Summary of, and comparison with, existing or proposed federal regulation: Federal regulations and administrative provisions allow alternating proprietorships and contract manufacturing of fermented malt beverages and intoxicating liquor. See federal TTB Industry Circulars [2005-2](#), [2008-4](#), [2018-3](#) for more information.

For alternating proprietorships, the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) requires all entities sharing a premises to be properly permitted. The host and tenant producers each hold title to their own ingredients and pay tax on their own products when removed from the bonded area.

For contract production purposes, federal regulations provide that only the production brewer is required to hold a permit and the production brewer holds title to the ingredients and pays the tax on the product produced under the agreement. In contrast, s. 125.21 (3) (b) and (e), Stats., requires both the production and recipe brewers to hold state-issued permits, and the recipe brewer is responsible for reporting and paying tax on the alcohol beverages produced under the agreement.

2023 Wisconsin Act 73 legalized alternating proprietorships and authorized contract production agreements for all types of alcohol beverage production. Wisconsin law is consistent with federal regulations relating to alternating proprietorships. However, contract production agreements have different reporting and regulatory requirements than federal law; specifically Wisconsin law reflects the tax, reporting, and regulatory responsibilities that previously existed for brewers in s. Tax 7.23, Wis. Adm. Code. This rule order repeals s. Tax 7.23, Wis. Adm. Code, because contract production requirements are specified in s. 125.21, Stats.

Federal labeling requirements for intoxicating liquor and fermented malt beverages are found in 27 CFR parts 4, 5, 7, 24, and 25. These sections of the federal code outline what products must be labelled and what information must appear on the alcohol beverage container and packaging. The department has referenced federal code sections for labeling requirements since 1978, in existing ss. Tax 7.21 and 8.52(2), Wis. Adm. Code. The rule order adds the specific federal code reference for distilled spirits.

Federal standards of fill are established in 27 CFR parts 4 and 5 and governs the amount of liquid that is placed in the bottle, can, or other vessel used to hold the alcohol beverage. In s. Tax 7.41 of this rule order, the division has generally adopted the federal standards of fill requirements for acceptable container sizes of intoxicating liquor.

There are no federal regulations applicable to other new provisions in this rule order.

Summary of comments received during preliminary comment period and public hearing on the statement of scope:

A comment period was opened on February 19, 2024 with notice in the Administrative Register. Interested and impacted parties were also contacted on February 20, 2024 via email message through the department's Administrative Rules and Alcohol Beverage email lists. A public hearing, noticed in the Administrative Register on February 19, 2024, was held via Microsoft Teams on February 23, 2024 with the purpose of soliciting feedback from impacted parties to inform the rule drafting process. 88 people registered to attend. 80 people attended the hearing. One person appeared offering testimony. Five people provided written testimony the day of the hearing. The comment period was open until 11:59PM on February 23, 2024. The comments from the public hearing and comment period and DOR's response follow.

1. Ron Hockersmith, Founder and Director of Beer at Amorphic Beer testified relating to the expansion of off-site retail privileges to all producers. Amorphic Beer is a small brewery in Milwaukee and has historically had the use of off-site retail privileges to conduct beer gardens, charitable events, and other outdoor activities across Wisconsin. Hockersmith's request is for the department to keep the simplicity and cost-effective nature of existing off-site retail permitting processes to sell beer at offsite events, further Hockersmith requests the department create a process and form that can be universally used by all Wisconsin municipalities. Hockersmith also requested that the department involve the industry directly in the rulemaking process by asking for their input.

a. DOR Response: DOR will consider Hockersmith's comments through the rulemaking process.

2. Jack Zelinka, Director of the Caribou Bay Retreat provided written comments regarding qualifying event venue licenses. Zelinka expressed concern that the forms to apply for qualifying event venue certification are not yet available and was unsure about the status of an event the business had booked for October 2024. Zelinka also asked questions regarding the cost of an above quota license issued to a qualifying event venue. Finally, Zelinka noted that the pricing structure for Caribou Bay Retreat will have to be adjusted to accommodate a new business model and this is a disadvantage compared to other venues that have an existing liquor license.

a. DOR Response: Provisions relating to qualifying event venue certification and above quota licenses do not take effect until January 1, 2026. The department is implementing provisions of Act 73 in order of effective date. Zelinka was informed that this Act will not impact the event scheduled at the venue for October 2024.

3. Nicole Lyddy, the Deputy Clerk of the City of Mauston provided written comments to express concern regarding the operator licensing process. Lyddy mentioned that simplifying the licensing process will result in consistency and fairness in who will hold an operator license in any given municipality and statewide. Lyddy also requested the department consider rules that prevent individuals who have been denied municipal operator's licenses from bypassing the process and obtaining an operator's permit from the state.

a. DOR Response: The existing operator's license process and qualifications are untouched in 23 Wisconsin Act 73 and are therefore outside of the scope of rulemaking. The department does recognize the importance of consistent operator licensing and will consider this feedback outside of this rule process. The department has considered and shares the concern about operator permittees obtaining state permits to undermine a municipal operator license decision. Rulemaking may be required on this topic.

4. Emily Chelberg, Co-Owner of Sunflower Hill Wedding and Event Venue, provided written comments regarding the impact of liquor licensing on event venues that are zoned for agricultural use with special exemptions. Sunflower Hill is an active farm with cattle and flower fields, both of which provide income streams outside of the event venue business. Chelberg would like the department to consider the impacts of zoning laws and liquor licensing on event venue businesses that are still actively farming.

a. DOR Response: The department will consider these comments as it relates to 2023 Wisconsin Act 73 and SS 009-24.

5. Erich Weidner, from Erich Weidner Consulting, provided written comments expressing concern that 2023 Wisconsin Act 73 was rushed and the structure of the effective dates of different provisions would make it difficult to track implementation.

a. DOR Response: This comment is related to the legislative process. It cannot be addressed through rulemaking.

A few attendees had questions about the contents of 2023 Wisconsin Act 73. Department staff provided resources to those attendees to get their questions answered.

Comparison with rules in adjacent states:

Tax 7.01 Authority and Purpose cites the statutory authority for the chapter and outlines the responsibilities of the Division of Alcohol Beverages.

Minnesota	The Minnesota Division of Alcohol and Gambling Enforcement is the authority over alcohol beverage law in Minnesota. The division resides in the Department of Public Safety. s. 340A.201 , Min Stats.
Iowa	Iowa Code section 123.1 outlines the public policy statement for alcohol beverage control.
Illinois	The Illinois Liquor Control Act of 1934 (s. 235 ILCS 5) governs alcohol beverage regulation in Illinois.
Michigan	Michigan Liquor Control Code of 1998 (ch. 436 MCL) establishes statutory authority for the Michigan Liquor Control and governs alcohol beverage regulation in Michigan.

Tax 7.03 Background check fees describe the purpose for background checks for alcohol beverage permit applicants and which members of the applicant business are subject to criminal history checks. Authority for the Division to charge these fees was granted in sec. 125.04(8m), Stats.

Minnesota	Minnesota caps investigation fees for alcohol beverage licenses are capped at \$500 for in-state licensees and \$10,000 in actual costs incurred for out-of-state licensees (s. 340A.412 , Min. Stats.).
Iowa	Background checks are required to determine fitness for an alcohol beverage license in Iowa. The Department of Public Safety background checks are \$15 each.
Illinois	Illinois state law (ILCS 5/6-2) requires that alcohol beverage licenses not be issued to persons that "are not of good character and reputation in the community in which they reside." The chapter outlines criminal history criteria that would prohibit a person from holding a license in Illinois.
Michigan	Michigan law gives the Michigan Liquor Control Commission the authority to request fingerprinting in s. MCL 436.1525(3) . Any applicant that has not been previously licensed to hold a license must consent to a background check and finger printing.

Tax 7.04 Permit fees outlines expiration dates, price, and when an application fee may be refunded for all alcohol beverage permits issued by the Division.

Minnesota	Alcohol permit fees in Minnesota vary depending on the type of permit and the city. Some alcohol beverage producers in Minnesota also receive their retail sales authority through local licensing so more than one fee may apply.
Iowa	Iowa alcohol beverage permit fees expire one year from the date of issuance unless suspended or revoked (s. 123.35(1) Iowa Code). Permit fees vary depending on the type of authorization.
Illinois	Illinois state and municipal licenses are renewed annually. State liquor license fees are established in s. 235 ILCS(5)5-3 .
Michigan	Alcohol beverage license fees are set by statute in s. 436.1525(1) MCL.

Tax 7.06 Responsible beverage server training course standards establishes requirements that alcohol beverage server training courses must meet to be approved. This codifies the departments' [long-standing guidance](#).

Minnesota	Based on the best available research, it appears that Minnesota delegates bartender licensing and course requirements to municipalities. Further research is needed to determine where this authority comes from.
Iowa	Alcohol server training course is not required in Iowa, and bartenders are not licensed. State law provides that if sufficient funding is appropriated, the department of revenue may create a course (s. 123.50A , Iowa Code).
Illinois	Illinois requires completion of an approved course for all on-premises alcohol servers as well as anyone who checks ID cards for alcohol service. Some requirements for approved Beverage Alcohol Sellers and Servers Education and Training (BASSET) are outlined in s. 235 ILCS 5/6-27 and in Illinois Administrative Code (77 Ill. Adm. Code 3500.155).
Michigan	Certain licensees have a bartender training course requirement as a condition of licensing, and most are required to have trained bartenders supervising sales and service of alcohol beverages. The Michigan Liquor Control Commission approves courses that meet the criteria set under s. 436.1906 , MCL.

Tax 7.11 Operators' permits establishes the expiration date and application process for operator's permits issued by the division.

Minnesota	Based on the best available research, it appears that Minnesota delegates bartender licensing and course requirements to municipalities. Further research is needed to determine where this authority comes from.
Iowa	Operator's licenses are not required by law in Iowa.
Illinois	The Illinois Liquor Commission issues BASSET certification cards to individuals that meet the criteria to hold them. The license is created in state law under 235 ILCS 5/6-27.1 .
Michigan	Michigan has responsible beverage server training requirements but does not issue licenses or other authorizations to servers.

Tax 7.12 Alcohol beverage warehouse standards establishes long-standing department practice for regulation of alcohol beverage warehouse permittees including who may hold this permit, authorized activities under the permit, and requirements of the premises.

Minnesota	Minnesota alcohol beverage warehouse standards are established in ss. 340A.305 and 340A.3055 , Min. Stats.
Iowa	Iowa controls the distribution tier of the alcohol beverage industry for intoxicating liquor. Further research is needed to determine if there are warehouse permits or standards for other types of alcohol beverage distributors outside of the state monopoly or for producers.
Illinois	There are some regulations in Illinois state law and administrative code relating to warehousing of alcohol beverages. Further research is needed to determine if that approach is like that in Wisconsin law.
Michigan	Michigan controls the distribution tier of the alcohol beverage industry for intoxicating liquor. Further research is needed to determine if there are warehouse permits or standards for other types of alcohol beverage distributors outside of the state monopoly or for producers.

Tax 7.13 Permissible interests provide definitions and processes necessary to administer s. 125.20, Stats, created in 2023 Wisconsin Act 73.

Minnesota	Cross-tier interest restrictions and permissible interests are governed by s. 340A , Minn. Stats.
Iowa	Cross-tier interest restrictions are governed by state statute, s. 123.45 , Iowa Code.
Illinois	In Illinois, cross tier interest restrictions are governed by state statutes 235 ILCS 5/6 and administrative code in s. 11 Ill. Adm. Code 100 .
Michigan	Cross-tier interest restrictions are governed by state statute, s. 436.1603 MCL .

Tax 7.14 Production agreements provide clarification for producers engaging in production agreements under s. 125.21 including requirements for disclosure of agreements, and examples for tax payment and reporting requirements specifically relating to contract production agreements with out-of-state recipe suppliers.

Minnesota	Minnesota statute and rules do not formally address contract production or alternating proprietorships. Minnesota relies on TTB guidance to regulate alternating proprietorships. The state requires submission of federal permits and an approved request for alternate method of operation from TTB upon application for a manufacturing license from Minnesota for an alternated premises. Recipe holders are not recognized as lawful manufacturers or brand owners in Minnesota. A recipe holder may hire a properly licensed Minnesota manufacturer that will register the brand with the state. Manufacturers in Minnesota may not sell finished products to each other. If a recipe holder wanted to send the product produced under contract to market, they would have to qualify for and obtain a state wholesaler or importer license.
Iowa	Iowa law allows alternating proprietorships for native wineries by state statute. Iowa Code s. 123.176 (7) requires alternating proprietorships be approved by the TTB and all manufacturers that are parties to the alternating proprietorship must have proper permits from the state. On July 1, 2023, a new law went into effect to allow alternating proprietorships for native breweries and brewpubs. Alternating proprietorships for intoxicating liquor are not allowed under Iowa state law.
Illinois	Illinois statute does not address alternating proprietorships or contract manufacturing relationships directly. For alternating proprietorships, the Illinois Liquor Control Commission expects licensed manufacturers to follow federal requirements for executing the agreement. Illinois allows contract manufacturing agreements. The Illinois Liquor Control Commission reserves the right to review all contracts to ensure that a licensed manufacturer is serving as the title holder that controls the product and sells the product to permitted wholesalers.
Michigan	Michigan allows alternating proprietorships for beer and wine manufacturing by statute, s. MCL 436.1105 (4). The law allows more than one winery or brewery to engage in an alternating proprietorship if all businesses are properly permitted by the TTB and the state. Upon application to the Michigan Liquor Control Commission, all businesses party to the agreement must present appropriate documentation from TTB to demonstrate federal approval. All manufacturers that are party to the agreement must have their own licensed premises. Manufacturers in Michigan must make their own products on their own licensed premises, except for alternating proprietorships. Because of this requirement, contract production of alcohol beverages in Michigan is illegal.

7.15 Common carriers provide that permits may be issued to one entity for multiple locations and specifies that the report must be filed electronically.

Minnesota	Common Carriers in Minnesota are passenger vehicles, like trains or planes, under s. 340A.407 Minn. Stats.
Iowa	Iowa Code references "common carrier" in ch. 123, but does not define it. Further research is needed to determine the definition of common carrier and if the regulation of such entities is comparable to that in Wisconsin Statutes.
Illinois	234 ILCS 5/8-12 governs common carrier regulation and reporting in Illinois.
Michigan	Section 436.1203 MCL governs the shipment of alcohol beverages into Michigan.

7.16 Fulfillment houses provide the expiration for fulfillment house permits, specifies that reports must be filed electronically, and that a permit is required for each location where wine will be shipped into Wisconsin.

The department was unable to locate relevant information from neighboring states on the regulation of fulfillment houses. Research on this topic is ongoing.

7.17 Full-service retail sales by producers creates a requirement for producers to apply for on-and off-premises sales approval from the division, applications must be made 15 days prior to desired commencement of full-service retail sales, explains how production volumes will be calculated and verified, when during the year a producer may apply for full-service retail sales, explains generally how cumulative production volume will be determined, and also provides several examples of how cumulative production volume will be determined if a legal business entity is merged, acquired, reorganized, or other restructuring. The section also creates a revocation, suspension, and refusal to renew process for these privileges and creates invoice and recordkeeping requirements.

Retail sales by producers of alcohol beverages varies significantly depending on the state. The department was unable to find relevant information to rule making at this time. Research on this topic is ongoing.

Summary of factual data and analytical methodologies: 2023 Wisconsin Act 73 created the Division of Alcohol Beverages with the authority and enforcement responsibility over alcohol beverage regulation in ch. 125, Stats. The bill left alcohol beverage taxation and associated reporting and recordkeeping requirements with the Department of Revenue. The rule order reflects this change and divides the chapters between the responsible divisions.

Several provisions of 2023 Wisconsin Act 73 are new to Wisconsin. The following items are new or significantly updated in state statute. Reasoning for rulemaking follows each topic.

Interest Restrictions: Prior to 2023 Wisconsin Act 73, most direct and indirect interests in a different tier of the alcohol beverage industry were prohibited. Long-standing administrative rules prohibited employees, managers, owners, and investors from one tier of the alcohol beverage industry from investing, owning, or working in another tier. The Act amended these sections of law to uphold the three-tier system prohibition on cross-tier interests but allowed for exceptions to the general prohibition under certain circumstances. This rule provides a definition of "ownership interest" to provide clarity to industry members when considering investment or ownership in another tier of the alcohol beverage industry. This rule also clarifies the process for determining ownership interest that is held through associated business entities or investments. Prior to passage of Act 73, Wisconsin law prohibited one spouse from holding an interest in a different tier of the alcohol beverage industry than the other spouse. Act 73 provided an exception for this cross-tier interest, contingent on the spouses providing documentation to the division or municipality of their marital property or prenuptial agreement. The Act

failed to state what division of business assets were acceptable in order to meet the exception. The rule requires the spouses to have divided the business assets in such a way that makes them individual and not marital property to be considered a permissible interest under sec. 125.20(6)(c), Stats.

Production Agreements: Contract production agreements for fermented malt beverages were legal under ch. 125 prior to Act 73. Contract production of intoxicating liquor or alternating proprietorships for any alcohol beverage were not allowed in Wisconsin prior to passage of Act 73. The Act legalized all production agreements under sec. 125.21, Stats. It prescribes which parties are responsible for permitting, tax payment, reporting, and which producers get credit for the production volumes for full-service retail sales and tax credit purposes. The Act did not specify the responsible party for tax payment and reporting purposes when an out-of-state recipe supplier enters into a contract production agreement with a Wisconsin contract producer. The rule clarifies responsibilities in this instance and provides examples. For enforcement purposes, the rule also requires that any production agreement document must be provided to the division upon request.

Common Carrier Permits: A Common carrier permit authorizes the holder to transport or deliver wine on behalf of a wine direct shipper permittee directly to an individual in Wisconsin. Common carrier permittees also have a statutory reporting requirement for all shipments into Wisconsin. This permit and reporting requirement were created in Act 73. This rule clarifies that a common carrier may apply, on one application, for a permit for all locations from which wine will be shipped. It also specifies that the report shall be filed electronically.

Fulfillment House Permits: Fulfillment house permits authorize the holder to provide warehousing, packaging, order fulfillment, and shipment services to wine direct shipper permittees for purposes of shipping wine directly to consumers in Wisconsin. Fulfillment house permittees also have a statutory reporting requirement from all shipments into Wisconsin. This permit and reporting requirement was created in Act 73. The law is inconsistent regarding applicants applying for one permit per location, or if they may apply for all locations with one application. The rule requires fulfillment house permittees to hold a permit for each location where a fulfillment house is operating. The rule also specifies that the report shall be filed electronically.

Full-service retail sales for producers: Prior to Act 73, state law had a mix of requirements and restrictions on breweries, manufacturers, rectifiers, and wineries serving and selling products at retail. Some producers were required to hold municipally issued retail licenses. Some producers had retail sales privileges as a condition of their state-issued producer permit. Act 73 eliminated this inconsistency and granted all producers (breweries, manufacturers, rectifiers, and wineries) retail sales privileges of their own products as a condition of their state-issued producer permit. Further, producers may earn full-service retail sales approvals on the production premises and/or at an off-site retail outlet by meeting certain production thresholds based on alcohol beverage type. The Act requires that municipalities approve of off-site retail outlets located within their borders, but the division must also approve. This rule clarifies that all applications for full-service retail sales must be approved of by the division, regardless of if the producer intends to engage in these sales at the production premises or at an off-site retail outlet. It requires that producers obtain municipal approval, when required by law, before turning in an application to the division. Producers must also submit completed applications at least 15 business days prior to the date the producer would like to begin full-service retail sales. This is to ensure timely review by the division and opportunity for dialogue to cure any potential issues with the applicant. The rule also specifies how the division will use excise tax returns to determine cumulative production volume and provides examples of cumulative production volume determinations in the event of a business acquisition, merger, name change, or dissolution. The rule requires fixed off-site retail outlets to be approved by the governing body and allows a municipality, by ordinance, to delegate approval authority to a municipal official for locations of unlimited transfer located at one premises for less than four consecutive days. Further, the rule details how producers will expect to receive approval from the division, and a procedure

for renewal, revocation, suspension, and refusal to renew. Finally, the rule provides requirements for record keeping, deliveries, and invoicing for full-service retail sales premises.

Small cooperative wholesalers: Prior to Act 73, small cooperative wholesalers could be formed for a period of time through 2008. Small cooperative wholesalers were formed by a cooperative of small wineries certified by the department and the cooperative was issued a wholesaler permit. Small cooperative wholesaler permittees were subject to a quota of six. Under Act 73, new small cooperative wholesalers may form through Fall 2025. Small manufacturers and rectifiers may be certified by the division to join a small cooperative wholesaler. The rule updates previously promulgated administrative code that creates a process for small cooperative wholesalers to follow to form.

The department and division have engaged with stakeholders in the alcohol beverage industry, including the Tavern League, Wisconsin Beer and Liquor Wholesalers, and the Wisconsin Craft Beverage Coalition. The division has also solicited feedback from municipal clerks through the Wisconsin League of Municipalities and Towns Association and a survey sent directly to clerks using the department's municipal clerk email list.

Analysis and supporting documents used to determine effect on small business: The department and division looked at legislative records regarding the passage of Act 73 to determine the impact to small business. Organizations like the Wisconsin Restaurant Association, Craft Beverage Coalition, Tavern League, Wisconsin Independent Business, and the Wisconsin Fuel & Retail Association were in favor of the policy of Act 73. Legislative records show that the Wisconsin Farmer's Union and Agricultural Tourism Associations were opposed. This rule order does not contain any material related to public places or no-sale event venues.

Anticipated costs incurred by private sector: There will be some costs incurred by the industry associated with acquiring permits, submitting required documents, and general compliance with the administrative code. Most of these requirements are consistent with similar procedures and practices that existed prior to the adoption of 2023 Wisconsin Act 73. As a result, the department and division do not anticipate significant costs outside of the regular course of business for compliance with these chapters.

Effect on small business: The division and department do not anticipate significant costs to small business outside of the regular course of business to comply with this rule.

Agency contact person: Please contact Ann DeGarmo at (608) 266-7179 or ann.degarmo@wisconsin.gov if you have any questions regarding this proposed rule.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

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TEXT OF RULE

SECTION 1: Chapter Tax 7 is repealed and recreated to read:

CHAPTER TAX 7 ALCOHOL BEVERAGE REGULATION

SUBCHAPTER I – GENERAL PROVISIONS

Tax 7.01 Authority and purpose. This chapter is promulgated pursuant to ss. [125.01](#), [125.025](#), [125.03](#), and [227.11 \(2\) \(a\)](#), Stats, and is in furtherance of the division's responsibility to ensure public health and welfare and economic stability. This chapter provides clarity in the administration of alcohol beverage laws under the division's mission to ensure fair, active, and consistent enforcement of alcohol beverage laws.

Tax 7.02 Definitions. Unless otherwise provided, the words and phrases in this chapter have the same meanings as provided in s. [125.02](#), Stats. In this chapter:

- (1) "Days" means calendar days unless otherwise specified.
- (2) "Distilled spirits" means intoxicating liquor but does not include wine.
- (3) "Division" means the division of alcohol beverages
- (8) "Producer" means a brewer holding a permit under s. [125.29](#), Stats., a manufacturer or rectifier holding a permit under s. [125.52](#), Stats., or a winery holding a permit under s. [125.53](#), Stats.

Tax 7.03 Background check fees. (1) To verify a permit applicant's eligibility under s. [125.04 \(5\)](#), Stats., the division will run criminal history inquiries on all applicants, including all individuals subject to arrest or conviction record qualifications.

(2) At the time of application, all permit applicants shall submit payment to the division equal to the fee under s. [165.82 \(1\) \(am\)](#), Stats., multiplied by the number of individuals subject to arrest or conviction record qualifications.

(3) The division may waive background check fees for any individual if the division has completed a criminal history inquiry on that individual within the previous 6 months.

(4) For the purpose of sub. (1), all of the following individuals are subject to arrest or conviction record qualifications:

- (a) Individual applicants, sole-proprietors, and all partners of a partnership.
- (b) All limited liability company members, managers, and the company's agent designated under s. [125.04\(6\)](#), Stats.
- (c) All corporate officers, directors, and the corporation's agent designated under s. [125.04 \(6\)](#), Stats.

(5) The background check fees described in this section are in addition to any other fees authorized under ch. 125, Stats. The background check fees described in this section will not be refunded for any reason, including the denial or nonrenewal of an application or permit.

Tax 7.04 Permits and fees. (1) Unless otherwise provided under this chapter or ch. 125, Stats., all alcohol beverage permits shall be issued biennially and shall expire on the same date as the business tax registration certificate issued to the business under s. [73.03\(50\)](#), Stats.

(2) (a) For alcohol beverage permits that require a premises, no alcohol beverage permit may be issued to a person unless the person is the owner or the lessee, or has written permission from the owner for use of premises to be permitted. Such person must have complete control over the premises to be permitted which is not shared by another person.

(b) In a contract production agreement under s. 125.21(3), Stats., the production permit issued to a recipe producer will not specify a premises. The production permit issued to a contract producer will specify a premises for which the contract producer has complete control.

(3) If an applicant for an alcohol beverage permit has an existing business tax registration certificate, the division may prorate the permit issuance fee based upon the number of months or fraction thereof remaining in the business tax registration cycle.

(4) If a permittee surrenders their permit prior to its expiration, or if a permit is revoked or suspended by the division, the permit issuance or renewal fee shall not be refunded.

(5) If a permit is not renewed, or an application for a permit is withdrawn or denied prior to issuance, any issuance or renewal fees identified in this section shall be returned or refunded to the permittee or applicant.

(6) Alcohol beverage permit issuance and renewal fees shall be determined in accordance with Table 7.04.

(7) Fees identified in Table 7.04 are in addition to the business tax registration fee under s. [73.03\(50\)](#), Stats., and the fees described in s. Tax 7.03.

Table 7.04

Alcohol Beverage Permit Issuance and Renewal Fees

Permit Type	Biennial Fee
1. Operator's Permit (s. 125.175 , Stats.)	\$200
2. Alcohol Beverage Warehouse (s. 125.19 , Stats.)	\$200
3. Common Carrier Permit (s. 125.22 , Stats.)	\$2,000
4. Fulfillment House Permit (s. 125.23 , Stats.)	\$200
5. Industrial Fermented Malt Beverages (s. 125.275 , Stats.)	\$200
6. Fermented Malt Beverage Wholesaler (s. 125.28 , Stats.)	\$4,000
7. Brewer (s. 125.29 , Stats.)	\$1,000
8. Brewpub (s. 125.295 , Stats.)	\$1,000
9. Out-of-State Shipper of Fermented Malt Beverages (s. 125.30 , Stats.)	\$1,000
10. Class "B" Sports Club (s. 125.27(1) , Stats.)	\$200 \$600
10a. Retail "Class B" Sports Club (s. 125.51(5)(a) , Stats.)	
11. Retail "Class B" Airport/Public Facility (s. 125.51(5)(b) , Stats.)	\$600
12. Class "B" Vessel (s. 125.27(2) , Stats.)	\$200 \$600
12a. Retail "Class B" Vessel (s. 125.51(5)(c) , Stats.)	
13. Class "B" Racetrack (s. 125.27(5) , Stats.)	\$100 \$300
13a. Retail "Class B" Racetrack (s. 125.51(5)(f) , Stats.)	
14. Limited Manufacturer (s. 125.52(2) , Stats.)	\$1,000
15. Rectifier (s. 125.52 , Stats.)	\$1,000

16. Manufacturer (s. 125.52 , Stats.)	\$1,000
17. Winery (s. 125.53 , Stats.)	\$1000
18. Direct Wine Shipper (s. 125.535 , Stats.)	\$200
19. Intoxicating Liquor Wholesaler (s. 125.54 , Stats.)	\$1,000
20. Sacramental Wine (s. 125.56 , Stats.)	\$0
21. Out-of-State Shipper of Intoxicating Liquor (s. 125.58 , Stats.)	\$1000
22. Wholesale (Ethyl) Alcohol (s. 125.60 , Stats.)	\$200
23. Medicinal Alcohol (s. 125.61 , Stats.)	\$0
24. Industrial Alcohol (s. 125.62 , Stats.)	\$200
25. Industrial Wine (s. 125.63 , Stats.)	\$200
26. Intoxicating Liquor Salesperson (s. 125.65 , Stats.)	\$200

Tax 7.05 Wine collectors. (1) PURPOSE. The purpose of this section is to set forth the requirements for the registration and sales activities of wine collectors.

(2) DEFINITIONS. For purposes of this section and ss. [125.02 \(23\)](#) and [125.06 \(11m\)](#), Stats., “wine collector” means an individual who collects and holds or intends to collect and hold producer-sealed bottles or containers of wine and is registered with the division as a collector of wine.

Note: Wine collector registrations may be addressed to Division of Alcohol Beverages, PO Box 8934, Madison, Wisconsin 53708-8934.

(3) WINE SALES BY WINE COLLECTORS. (a) A wine collector may sell to any other wine collector producer-sealed bottles or containers of wine held by the selling wine collector for at least 8 years if the selling wine collector files a written notice of the sale with the division at least 30 days prior to the sale. The notice of sale shall contain all of the following information:

1. The date and location of the sale.
2. The date the wine was originally purchased by the selling wine collector.
3. A description of the transaction, including the quantity and price of the wine to be sold.
4. The name and address of an agent, consignee, lienor, or broker contracted to sell the wine by the selling wine collector, and a copy of any contract entered into between the selling wine collector and the agent, consignee, broker, or lienor.

(b) No more than one sale in any 12-month period shall be conducted by a wine collector under this subsection.

(c) A wine collector conducting a sale under this subsection shall provide purchase invoices or any other information as requested by the division to verify that the requirements described in s. [125.06 \(11m\)](#), Stats., have been met.

(4) ELECTRONIC FILING. (a) The division requires that a wine collector file the notice of sale required under sub. (3) (a) electronically by means prescribed by the division. The division shall notify the wine collector at least 90 days prior to the effective date of the requirement to file electronically.

Note: A wine collector shall email a notice of sale to DORAlcohol@wisconsin.gov.

Tax 7.06 Responsible beverage server training course standards. (1) PURPOSE. For the benefit of public health and welfare, certain individuals serving or supervising service of alcohol beverages shall complete a responsible beverage server training course that is approved by the division. The purpose of this section is to set forth minimum standards and requirements for approval of such courses. All approved courses shall maintain the standards and requirements set forth under this section. The division may immediately revoke the approval of any course not maintaining such standards and requirements.

(2) GENERAL REQUIREMENTS. All of the following requirements and those under sub. (3) are required for a responsible beverage server training course to obtain and maintain approval by the division:

(a) The course must have a tobacco, cigarette, and nicotine seller information that is approved by the Wisconsin Department of Health Services pursuant to s. [134.66 \(2m\)](#), Stats.

(b) The course content must be original, except course creators are encouraged to extensively quote and paraphrase Wisconsin statutes, administrative rules, and guidance documents posted on the division's website.

(c) The course must have an instructional narrative and interactive components throughout.

(d) Course providers may not copy, paraphrase, or reproduce content from another course or from any other 3rd-party without express approval from the owner of the content. If using materials hosted on or produced by a 3rd-party platform, the course provider is accountable for the content and continuous availability.

(e) The use of any statistics or factual claims must be accompanied by citation to a reputable source such as a scholarly journal, government agency report, or similar verifiable source.

(f) The course must provide a certificate of completion to students that successfully complete the course. The certificate of completion must have the full name of the approved course provider, not the parent company or any other name.

(g) The certificate of completion must have the following text included: "This certificate represents the successful completion of an approved Wisconsin Division of Alcohol Beverages Responsible Beverage Server Course in compliance with secs. 125.04(5)(a)5., 125.17(6), and 134.66(2m), Wis. Stats."

(h) The course must have an exam that is comprehensive of the course material, including questions that specifically relate to Wisconsin statutes or administrative rules. Exam questions must be rigorous enough that correct answers are not easily identifiable or answered by guessing. The successful passing threshold for the exam must be at least 80 percent. The exam must provide students with the opportunity to retake the test if they did not pass on their first attempt. After the completion of the exam, whether passing or failing, a student's incorrect responses must be displayed as well as information about the correct response.

(i) The course should take approximately 4 hours or longer to complete.

(3) COURSE CONTENT. (a) The course must contain most of the content found in the booklet required under s. [125.045](#), Stats. Courses shall also review all key points of this chapter and ch. 125, Stats.

(b) The course must have curriculum covering the importance of responsible alcohol beverage service, the effects of alcohol beverages on the body, levels of intoxication, and techniques for controlling over-consumption and preventing intoxication.

(c) The course must provide instruction on verifying the identity and age of individuals. The course must have a direct link and specific reference to the verification of identity and age section of the booklet required under s. [125.045](#), Stats.

(d) The course should discuss business practices expected of retailers of alcohol beverages, including licensing and permitting requirements, the requirement to hold a Wisconsin seller's permit, and registration with the federal alcohol and tobacco tax and trade bureau.

Tax 7.07 Label requirements. (1) No person shall sell fermented malt beverages in this state unless the fermented malt beverages are labeled in accordance with federal regulations under 27 CFR parts 7 or 25, whichever is applicable to the type of alcohol beverage.

(2) Pursuant to s. 125.68(9), Stats., no person shall sell intoxicating liquor in this state unless the intoxicating liquor is labeled in accordance with federal regulations under 27 CFR parts 4, 5, 24, or 25, whichever is applicable to the type of alcohol beverage.

(3) This section does not apply to any of the following:

(a) Any person legally selling alcohol beverages by the glass, refillable container, or similar vessel, provided that the alcohol beverages originated from a container that was in compliance with this section.

(b) Any "Class B" licensee selling intoxicating liquor for off-premises consumption in a container with a tamper-evident seal as authorized under s. [125.51\(3\)\(a\)](#) and [\(b\)](#), Stats.

(c) Any "Class B" licensee selling mixed drinks from a bulk container that is in compliance with s. [125.51\(3\)\(bg\)](#), Stats.

Tax 7.08 Purchases and invoices. (1) PURPOSE. This section is created for purposes of compliance with invoice and records information and retention requirements under s. [139.11\(1\)](#), Stats.

(2) DEFINITIONS. In this section, "retailer" has the meaning provided under s. [125.02\(19\)](#), Stats., and includes brewers, rectifiers, manufacturers, and wineries approved by the division to make full-service retail sales under s. [125.29\(7\)](#), [125.52\(4\)](#), or [125.53\(3\)](#), Stats., when acting in their capacity to make retail sales of alcohol beverages at any of their full-service retail premises, and permitted brewpubs.

(3) PURCHASES BY INTOXICATING LIQUOR PRODUCERS. (a) No Wisconsin manufacturer, rectifier, or winery may purchase or obtain intoxicating liquor from outside the state except from a person holding an out-of-state shipper's permit issued under s. [125.58](#), Stats. Any such intoxicating liquor shall only be purchased or obtained for purposes of further use in the production of intoxicating liquor.

(b) Out-of-state shipper permittees shall issue a separate invoice to a manufacturer, rectifier, or winery covering each sale, shipment, or delivery of intoxicating liquor to that manufacturer, rectifier, or winery. Each invoice shall be retained on the permitted premises of both parties for a minimum of two years from the date of invoice, or for as long as any intoxicating liquor remains on the premises, whichever date is later. These invoices shall be available for inspection during normal business hours.

(4) PURCHASES BY WHOLESALERS. No wholesaler holding a permit under ss. [125.28](#) or [125.54](#), Stats., shall purchase or obtain alcohol beverages from any person, except for any of the following:

(a) A person holding a permit under s. [125.29](#), [125.295](#), [125.30](#), [125.52](#), or [125.53](#), Stats., and who is the primary source of supply for that beverage.

(b) Another wholesaler holding a permit under s. [125.28](#) or [125.54](#), Stats.

(5) SEPARATE INVOICES TO WHOLESALERS. Persons identified in sub. (4) (a) and (b) shall issue a separate invoice to a wholesaler covering each sale, shipment, or delivery of alcohol beverages to that wholesaler. Each invoice shall be retained on the permitted premises of both parties for a minimum of two years from the date of invoice, or for as long as any of the alcohol beverages remain on the premises, whichever date is later. These invoices shall be available for inspection during normal business hours.

(6) PURCHASES BY RETAILERS. Retailers may purchase or obtain alcohol beverages only from any of the following persons:

(a) A wholesaler holding a permit under ss. [125.28](#) or [125.54](#), Stats.

(b) A brewer's permit holder self-distributing fermented malt beverages under s. [125.29\(3m\)](#), Stats.

(c) A brewpub permit holder self-distributing fermented malt beverages under s. [125.295\(1\)\(g\)](#), Stats.

(d) A fermented malt beverage out-of-state shipper permittee under s. [125.30](#), Stats., self-distributing fermented malt beverages under s. [125.30\(4\)](#), Stats.

(e) A retailer making a liquidating transaction under s. Tax 7.10.

(7) SEPARATE INVOICES TO RETAILERS. Persons identified in sub. (6) (a) to (d) shall issue a separate invoice to a retailer covering each sale, shipment, or delivery of alcohol beverages to that

retailer. Each invoice shall be retained on the premises of both parties for a minimum of 2 years from the date of invoice or for as long as any of the alcohol beverages remain on the premises, whichever date is later. These invoices shall be available for inspection during normal business hours.

(8) INVOICE RETENTION REQUIREMENTS. Alcohol beverage invoices described in this section must be retained in groups covering a period of one month each. The date of payment for each invoice shall be recorded and retained by the seller. Invoices may be retained in electronic form only if they are able to be made and are made readily available for inspection as described in this section.

(9) INVOICE INFORMATION REQUIREMENTS. An invoice shall contain all the following information:

- (a) Invoice number.
- (b) Date of sale.
- (c) Names and business addresses of both parties as shown on the permit, license, or authorization of each party.
- (d) Location from which the alcohol beverage delivery originated and the location where it was delivered.
- (e) Name of carrier, if applicable.
- (f) Name of salesperson, if applicable.
- (g) Quantity and package size of alcohol beverages by type and brand.
- (h) Unit price per package.
- (i) Discount.
- (j) If applicable, the amount of Wisconsin excise tax, listed as a separate line item.

(10) DELIVERIES TO ONE PREMISES. Except as provided in s. Tax 7.10 and ss. [125.29 \(3\)\(c\)](#), [125.295 \(1\)\(e\)](#), [125.52 \(1\)\(b\) 5](#), and [125.53 \(1\)\(a\) 6](#), Stats., no retailer may transfer any alcohol beverages to another retailer or location for sale at that location, including any locations also owned or operated by that retailer. All deliveries of alcohol beverages to retailers shall be made only to the premises or location listed on the invoice and such alcohol beverages shall remain at that premises or location until sold to consumers.

Example: Retailer MN holds two retail licenses in Wisconsin for Location 1 and Location 2. Retailer MN purchases a case of liquor from permitted Wholesaler for delivery by Wholesaler to Location 1. Retailer MN cannot take the case of liquor to Location 2. The case of liquor must remain at Location 1 and shall only be sold from the licensed premises of Location 1.

Tax 7.09 Sales by wholesalers to non-licensees and certain permittees. Wholesalers holding a permit under ss. [125.28](#) or [125.54](#), Stats., may sell alcohol beverages to any of the following:

- (1)** Campuses making retail sales of alcohol beverages.
- (2)** Railroads and aircraft making retail sales or allowing consumption of alcohol beverages in compliance with s. [125.06 \(5\)](#), Stats.
- (3)** Persons holding permits under ss. [125.275](#), [125.56](#), [125.61](#), [125.62](#), and [125.63](#), Stats.
- (4)** Permitted brewers, rectifiers, manufacturers, and wineries approved by the division to make full-service retail sales under ss. [125.29 \(7\)](#), [125.52 \(4\)](#), or [125.53 \(3\)](#), Stats., for resale at their full-service retail premises.

Tax 7.10 Transfer of retail alcohol beverage inventory upon liquidation. (1) Upon permanent closure of the business, a licensed or permitted retailer may sell their entire inventory of alcohol beverages that are in original, sealed containers, but only in one liquidating transaction to any other licensed or permitted retailer provided the conditions in sub. (2) are met.

(2) Prior to the transfer, an inventory transfer form must be completed. The form shall be made available on the division's website for use in a transfer under this section. The inventory transfer form must list the complete quantities, brands, container sizes, and the type of alcohol beverages to be transferred. The form shall be signed by both the buyer and the seller. The seller shall retain one copy, and another copy shall be retained by the buyer on the licensed or permitted premises and made available for inspection during normal business hours.

Tax 7.11 Operators' permits. (1) Operators' permits issued by the division under s. [125.175](#), Stats., shall expire 2 years from the date of issuance.

(2) Upon submission of an application for an operators' permit to the division, applicants shall remit the background check fee under s. Tax 7.03.

(3) Prior to issuance or renewal of the operator's permit by the division, applicants shall remit the fee under s. Tax 7.04.

Tax 7.12 Alcohol beverage warehouse standards. (1) No person shall be issued an alcohol beverage warehouse permit under s. [125.19](#), Stats., unless they are a producer or a wholesaler holding a permit under s. [125.28](#) or [125.54](#), Stats.

(2) All alcohol beverage warehouse permits shall be issued to the person that owns or has title to the alcohol beverages stored at the warehouse premises. If a producer or wholesaler is leasing warehouse space from another person, the permit must be issued to the producer or wholesaler and not to the owner of the warehouse.

(3) No alcohol beverage warehouse premises may be shared with any other person. In the case where multiple alcohol beverage warehouse permittees hold permits within the same building, each permittee's premises must be distinct and separate from any others and may not overlap in any way. In these instances, the division may require physical barriers, such as floor-to-ceiling walls, fencing, or similar barriers to separate the premises.

(4) No wholesaler holding an alcohol beverage warehouse permit may receive alcohol beverages delivered directly to the alcohol beverage warehouse premises. All alcohol beverages purchased or obtained by a wholesaler must first be delivered to, and physically unloaded at, the premises described in the wholesaler permit issued under s. [125.28](#) or [125.54](#), Stats.

(5) Alcohol beverage warehouses serve as overflow or additional storage for producers or wholesalers. No person shall invoice from, or make a sale of alcohol beverages from, an alcohol beverage warehouse premises unless that person also holds a wholesaler permit for the same premises.

Example: A winery, manufacturer, or rectifier holding a direct wine shipper permit under s. [125.535](#), Stats., may not ship alcohol beverages from, or make sales of alcohol beverages from, an alcohol beverage warehouse premises.

Tax 7.13 Permissible interests. (1) DEFINITIONS. In this section, "Ownership interest" includes any ownership in a sole proprietorship, partnership, corporation, limited liability company, or estate as an individual, partner, shareholder, member and includes an interest in a trust as a trustee or trust beneficiary.

(2) OWNERSHIP INTERESTS OF RESTRICTED INVESTORS. For purposes of s. [125.20 \(6\) \(a\) 1](#), Stats., any determination whether a person holds more than a 10 percent ownership interest in a licensee or permittee must include ownership interests in the licensee or permittee held directly or indirectly by entities connected to the person. All ownership interests in the licensee or permittee that are held or connected to the person shall be aggregated regardless of whether the person's ownership interest is passive, nonpassive, direct, or indirect.

(3) MARRIAGE AFFIDAVITS, PRENUPTIAL AGREEMENTS, AND MARITAL PROPERTY AGREEMENTS. Any prenuptial agreement or marital property agreement submitted to a municipal clerk or the division under s. [125.20 \(6\) \(c\) 3](#), Stats., shall explicitly state that the licensed or permitted business is the individual property of a spouse and is not marital property to be considered a permissible interest.

Note: Section [125.04 \(3\) \(h\)](#), Stats., provides that within 30 days of any change in any fact set out in an application for a license or permit to sell alcohol beverages, the licensee or permittee shall file with the issuing authority a written description of the changed fact, including any change in restricted investors under s. [125.20 \(6\) \(a\) 5](#), Stats.

Tax 7.14 Production agreements. (1) In this section, all terms have the same meaning as provided in s. [125.21](#), Stats.

(2) Upon request of the division, a producer, contract producer, recipe producer, guest producer, host producer, out-of-state recipe supplier, producer-licensee, or licensor shall provide to the division the written contract or agreement for any contract production agreement, alternating proprietorship, or licensing agreement.

(3) (a) A producer may enter into a contract production agreement with an out-of-state recipe supplier that does not hold a Wisconsin production permit only if all the finished alcohol beverages are shipped directly from the producer to a location outside of this state.

Example 1: Winery DEF, an out-of-state recipe supplier, contracts with Wisconsin Winery TUV to bottle wine for Winery DEF. All finished wine will be shipped directly from Wisconsin Winery TUV to Winery DEF's out-of-state location, with no product remaining in Wisconsin. In this example, Wisconsin Winery TUV must file the tax return required under ch. 139, Stats., for the wine bottled pursuant to the contract production agreement to show the wine produced, but no excise tax is due since all product is shipped out of state. Winery DEF is not required to hold any Wisconsin production permit.

(b) An out-of-state recipe supplier that contracts with a producer where alcohol beverages produced under the contract are warehoused in this state or sold from this state directly to a wholesaler or producer in this state, must obtain the appropriate Wisconsin production permit to engage in these activities.

Example 2: Out-of-state Distiller GHI contracts with Wisconsin Rectifier QRS to purify and blend a new intoxicating liquor according to Distiller GHI's specifications. Per the contract, Distiller GHI will warehouse the alcohol beverages in Wisconsin prior to selling some to a permitted Wisconsin wholesaler before the remainder is sold out-of-state. Distiller GHI must obtain a rectifier's permit as a recipe supplier, and an alcohol beverage warehouse permit for the storage location. Distiller GHI, as the recipe producer, must report all contractual production, including production destined for another state, through the rectifier's permit by filing the tax return and paying the excise tax due under ch. 139, Stats., for the alcohol beverages produced and distributed in Wisconsin.

Tax 7.15 Common carrier permit; shipments into state. (1) A person applying for a common carrier permit issued under s. [125.22](#), Stats., shall apply for one permit on a single application for all locations from which wine is shipped or transported directly to consumers in accordance with s. [125.22](#) Stats.

(2) The report under s. [125.22 \(2\) \(a\)](#), Stats., shall be filed electronically with the division in the manner prescribed by the division.

Tax 7.16 Fulfillment houses. (1) A fulfillment house permit under s. [125.23](#), Stats. shall be separately applied for and issued for each location from which wine will be shipped into this state.

(2) The report under s. [125.23 \(5\)](#), Stats., shall be filed electronically with the division in the manner prescribed by the division.

Tax 7.17 Full-service retail sales by producers. (1) APPLICATION. (a) All applications to make full-service retail sales by producers, including sales made on the production premises and any off-site retail outlet, shall be submitted to the division on the application form created by the division.

(b) All applications for full-service retail sales by producers shall be submitted to the division at least 15 business days prior to the desired commencement of full-service retail sales. Any application submitted to the division less than 15 business days prior to the desired commencement of full-service retail sales may not receive approval by the division prior to the desired commencement.

(2) PRODUCTION VOLUME AND ELIGIBILITY. (a) Cumulative production volumes shall be verified by the producer's Wisconsin excise tax returns filed with the department of revenue. Qualified cumulative production volumes are determined only by finished product reported on excise tax returns and only in the month that such products become finished.

(b) Cumulative production volume requirements shall be based on a calendar year. However, a producer will be eligible to apply for full-service retail sales at any point within a calendar year when their filed Wisconsin excise tax returns report qualifying cumulative production volume.

(c) Historical cumulative production volumes for a producer shall only be considered for the legal entity that is applying to make full-service retail sales and that currently holds the respective producer permit. In the case of mergers, acquisitions, reorganizations, and similar business restructures, the cumulative production volume for a previous legal business entity is not considered when evaluating the applicant's production volume eligibility.

Example 1: Brewer ABC LLC acquires Brewer XYZ LLC and now operates the entire enterprise as Brewer ABC LLC. Historical cumulative production volumes for Brewer XYZ LLC are not considered for Brewer ABC LLC's application to make full-service retail sales.

Example 2: Winery 123 LLC and Winery 456 LLC form a new legal entity, Winery 789 LLC. Neither historical cumulative production volumes for Winery 123 LLC nor for Winery 456 LLC are considered when evaluating Winery 789 LLC's application to make full-service retail sales.

Example 3: Manufacturer A, LLC converts to Manufacturer B, Inc. Historical cumulative production volumes for Manufacturer A, LLC are not considered when evaluating Manufacturer B Inc.'s application to make full-service retail sales.

Example 4: Brewer 1, Inc., goes through only a name change to Brewer 2, Inc. The federal employer identification number and other tax numbers and registrations remain the same; it is a legal name change only. The historical production volumes for Brewer 1, Inc., are considered for Brewer 2, Inc.'s application to make full-service retail sales.

Example 5: Winery A, Inc., is owned by Person 1 and Person 2. Person 3 and Person 4 purchase all stock of Winery A, Inc. and become the new owners of Winery A, Inc. Since only the owners of Winery A, Inc. changed, and the legal entity continues to exist, historical cumulative production volumes of Winery A, Inc., is considered when evaluating Winery A Inc.'s application to make full-service retail sales.

(d) Historical cumulative production volumes for brewpub permittees that become brewer's permittees, winery permittees that become rectifier's or manufacturer's permittees, and manufacturer's or rectifier's permittees that become winery permittees, will be considered when evaluating the applicant's cumulative production volume eligibility only if the legal business entity has remained unchanged.

Example 1: XYZ LLC, a brewpub permittee, surrenders their brewpub permit and retail alcohol beverage licenses and obtains a brewer's permit under XYZ LLC. Historical cumulative production volumes are considered when evaluating XYZ LLC's application to make full-service retail sales.

Example 2: Winery LLC, a winery permittee, surrenders their winery permit and obtains a manufacturer's permit under Manufacturer LLC. Historical cumulative production volumes for Winery LLC will not be considered when evaluating Manufacturer LLC's application to make full-service retail sales. However, if Winery LLC obtained the manufacturer's permit, then historical production volumes are considered for evaluating Winery LLC's application to make full service-retail sales.

(e) Upon a producer submitting written request for a waiver, the division administrator may waive the determinations on eligibility of historical production volumes provided under par. (c) and (d) if the division administrator determines the waiver is fair and equitable. Any producer submitting a written request for a waiver shall explain the reasons why such waiver is fair and equitable, the effects of granting or denying the waiver request, and the individual circumstances surrounding the business entity change.

(3) MUNICIPAL APPROVAL OF FULL-SERVICE RETAIL OUTLETS. (a) All applications for full-service retail outlets by producers shall be approved by the municipality where the prospective outlet will be located prior to applying to the division.

(b) Except as described in par. (c), full-service retail outlets shall be granted or denied by the governing body of the municipality or a duly authorized committee of a city council.

(c) Municipalities may, by ordinance, designate a municipal official to grant or deny an outlet location of unlimited transfer that will be in existence for less than 4 consecutive calendar days.

(4) DIVISION APPROVAL OF FULL-SERVICE RETAIL SALES. (a) No producer shall make full-service retail sales without first receiving approval by the division.

(b) Approval by the division shall be in the form of a permit certificate issued to the producer which indicates the person authorized to make full-service retail sales, the premises description, the

municipality, the type of alcohol beverages authorized for sale, and the dates and times when sales are authorized.

(c) Permit certificates issued under par. (b) shall be displayed in accordance with s. [125.04 \(10\)](#), Stats.

(5) RENEWALS. (a) Unless otherwise noted in the permit certificate described in sub. (4) (b), all approvals for full-service retail sales, including approvals for sales made on the production premises and any off-site retail outlet, shall expire on the same date as the producer's production permit and the business tax registration certificate issued under s. [73.03 \(50\)](#), Stats.

(b) A renewal of a full-service retail sales approval shall be reviewed by the division at the same time as the renewal for the underlying production permit.

(c) Producers do not need the approval described in sub. (3) for renewal.

(6) REVOCATIONS, SUSPENSIONS, AND REFUSALS TO RENEW. (a) The division shall have the sole authority to revoke a producer's approval for full-service retail sales,

(b) Any revocation of a producer's approval for full-service retail sales by the division shall follow the procedures in s. [125.12 \(5\)](#), Stats.

(c) Any municipality or person may make a complaint to the division alleging that a producer has violated the law or that the producer does not hold the proper qualifications for full-service retail sales. The division shall review such complaints and determine whether the allegations are sufficient to revoke, suspend, or refuse to renew the authorization.

(7) ALCOHOL BEVERAGE PURCHASES, DELIVERIES, AND INVOICES. (a) Except as provided in par. (b), the provisions of s. Tax 7.08 (6) and (10), as they relate to the purchase source of alcohol beverages and the delivery and transfer of alcohol beverages, apply individually to each of a producer's full-service retail sales premises, including the production premises and at off-site retail outlets.

(b) With respect to a full-service retail outlet of unlimited transfer that will be in existence for less than 4 consecutive calendar days, a producer may do all of the following:

1. Accept delivery of alcohol beverages at their production premises and subsequently transport those alcohol beverages to the full-service retail outlet of unlimited transfer.

2. Transport any alcohol beverages not sold or consumed at the expiration of the outlet back to their production premises to be sold at the full-service retail location at the production premises or at a subsequent off-site outlet of unlimited transfer for less than 4 consecutive days.

(c) Nothing in par. (b) relieves a producer from the requirements under s. Tax 7.08 (7) and (8) to have alcohol beverage purchase invoices available for inspection at any full-service retail outlet, including an outlet of unlimited transfer for less than 4 consecutive days.

(8) ALCOHOL BEVERAGE SALES. (a) No producer may make full-service retail sales of alcohol beverages for consumption off the premises unless the sale is made in the original unopened package or container.

(b) Nothing in this subsection alters a municipality's ability to limit the scope of alcohol beverages offered for sale at a producer's full-service retail sales outlet.

Tax 7.18 Wholesaler warehouse facilities. (1) MINIMUM REQUIREMENTS FOR WHOLESALER WAREHOUSE FACILITIES. The premises described in a permit issued under s. [125.28](#) or [125.54](#), Stats., shall have a minimum of 1,000 square feet of floor space and shall be located in a free-standing building that is not part of or connected to a premises covered by a retail license or permit.

(2) EXCEPTION TO MINIMUM REQUIREMENTS. The division administrator may waive the requirement that a premises have a minimum of 1,000 square feet of floor space if the division administrator determines the waiver is fair and equitable and if the applicant or permittee does all of the following:

(a) Submits a written request for a waiver along with the application for issuance or renewal of a permit.

(b) Clearly indicates how the requirements described in sub. (1) and s. [125.28\(5\)\(a\)](#) or [125.54 \(7\)](#), Stats., other than the requirement that the premises described in the permit be a minimum of 1,000 square feet of floor space, will be or have been met.

(3) **INVENTORY RECORDS.** Every permittee under s. [125.28](#) or 125.54, Stats., shall complete a written inventory listing the entire stock of alcohol beverage stored at the premises described in the permit as of the close of business on the last day of every month. A copy of the inventory listing shall be retained on the premises described in the permit for 2 years from the date the inventory is completed and shall be open to inspection during normal business hours.

(4) **INSPECTIONS OF WHOLESALER WAREHOUSE FACILITIES.** Before issuing a permit under s. [125.28](#) or 125.54, Stats., the division shall conduct a site inspection of the premises described in the permit application to determine if such premises meets the minimum requirements described in sub. (1). The division shall also conduct periodic site inspections of these premises.

(5) **PROCESSING OF PERMITS BY THE DIVISION.** The issuance and renewal of permits under s. [125.28](#) or 125.54, Stats., shall be done in coordination with the enforcement of the requirements of s. [125.28\(5\)\(e\)](#) or 125.54 (7), Stats., including the inspections under sub. (4).

Tax 7.19 Returns of alcohol beverages. (1) RETURNS BY INDIVIDUAL CONSUMERS TO RETAILERS. Once a sale has been made by a retailer to an individual consumer, no retailer may accept a return of alcohol beverages. Nothing in this subsection prohibits a retailer from issuing a refund to an individual consumer for an alcohol beverage.

(2) **RETURNS BY RETAILERS.** (a) Except as provided in par. (b), persons identified in Tax 7.08(6)(a) to (d) may not accept returns of alcohol beverages from retailers.

(b) Persons identified in Tax 7.08(6)(a) to (d) may replace expired, spoiled, or recalled alcohol beverages sold to retailers as long as the beverages are replaced with an identical brand, flavor, quantity, and size, and the replacement transaction is documented on an invoice provided to the retailer and in compliance with Tax 7.08.

Tax 7.20 Retail premises. (1) Alcohol beverage licenses shall be issued for a fixed premises describing land or buildings.

(2) No alcohol beverage license shall be issued to a person, unless the person is the owner, lessee, or has written permission from the owner for use of premises to be licensed. Such person must have complete control over the premises to be licensed which is not shared by another person.

(3) For purposes of s. [125.51\(8\)](#), Stats., a licensed premises is not a connecting premises if it is completely separated from another licensed premises by floor-to-ceiling walls and has its own primary entrance to the premises.

SUBCHAPTER II – FERMENTED MALT BEVERAGES

Tax 7.31 Restrictions on dealings between brewers, brewpubs, wholesalers, and retailers.

(1) **DEFINITIONS.** In this section and in s. [125.33](#), Stats.: (a) "Event" means any activity, game, contest, tournament, or entertainment that is conducted on that part of a campus premises where the sale of fermented malt beverages takes place or premises operated under a retail Class "B" fermented malt beverage license or permit or promoted by a campus operation for the sale of fermented malt beverages or retail Class "B" fermented malt beverage licensee or permittee.

(b) "Sign" means a graphic display, containing letters, words, symbols, numerals, shapes, forms or pictures, including all component parts and labor necessary to assemble the unit, which has no value or use except to advertise or identify a product or a place of business or an event or any combination of these. The value of the sign is determined by the original cost of acquisition if it is purchased by a brewer, brewpub, or wholesaler.

(c) "Sponsor" means to underwrite in whole or in part the cost of an event by providing signs, advertising in score cards or on scoreboards and fences or by providing equipment, prizes, trophies, entertainment, or other things of value.

(2) **BREWER'S PERMIT RESTRICTION AND EXCEPTIONS.** (a) *Restriction.* No brewer, brewpub, or wholesaler of fermented malt beverages may sponsor any event conducted on that part of a campus premises where the sale of fermented malt beverages takes place or premises operated under a retail Class

“B” fermented malt beverage license or permit or promoted by a campus operation for the sale of fermented malt beverages or retail Class “B” fermented malt beverage licensee or permittee.

(b) *Exceptions.* However, a brewer, brewpub, or wholesaler may do any of the following:

1. Purchase advertising or other services or rights for a fair consideration from any corporate Class “B” retail fermented malt beverage licensee which is a member of a regularly established athletic league if the licensee derives more than 50 percent of its gross income from the ownership, maintenance and operation of a professional athletic team which plays a regular schedule of games and which derives more than 50 percent of its income from the sale of admissions to the team's games.

2. Enter into contracts or other arrangements directly with nonlicensed 3rd parties to sponsor an event or sponsor radio or television broadcasts, to make payment for advertising, or to provide other services or things of value if all of the following conditions are met:

a. No payments, services or other things of value are made directly or indirectly by the brewer, brewpub, or wholesaler to a Class “B” licensee.

b. The payments, services, or other things of value are not contingent upon the event being held at any premises designated by the brewer, brewpub, or wholesaler.

c. The sponsor's products are not required to be sold or served at the premises selected by the nonlicensed 3rd party.

3. Permit refrigerated trucks or trailers to remain on Class “B” licensed premises for the storage of beer during an event. At the conclusion of the event the brewer, brewpub, or wholesaler may issue one invoice to the Class “B” licensee for the beer actually used at the event.

(3) EXAMPLES OF PROHIBITED ACTIVITIES. Subject to the limitations in sub. (2) (a) and (b), examples of conduct prohibited by s. 125.33 (1), Stats., and this section include: (a) A brewer, brewpub, or wholesaler may not sponsor an association, team or other organization for a campus or Class “B” licensee or permittee or have a Class “B” licensee, corporate officer or partner who is part of an association, team or other organization it sponsors.

(b) A brewer, brewpub, or wholesaler may not hire persons to provide a concert or music at a Class “B” licensed premises.

SUBCHAPTER III – INTOXICATING LIQUOR

Tax 7.41 Size of distilled spirits containers and standards of fill. (1) Except as provided in sub. (4), no person may sell or offer for sale distilled spirits in a container larger than 1.75-liter (59.1752 fluid ounce) capacity, pursuant to s. 125.03(2), Stats.

(2)(a) For containers other than those described in par. (b), and except as provided in sub. (4), no person may sell or offer for sale, any distilled spirits in any container size other than the following:

1. 1.75 Liters.
2. 1.00 Liter.
3. 900 mL.
4. 750 mL.
5. 720 mL.
6. 700 mL.
7. 375 mL.
8. 200 mL.
9. 100 mL.
10. 50 mL.

(b) For metal containers that have the general shape and design of a can, that have a closure that is an integral part of the container, and that cannot be readily reclosed after opening, and except as provided in sub. (4), no person may sell or offer for sale, any distilled spirits in any metal container size other than the following:

1. 355 mL
2. 200 mL
3. 100 mL
4. 50 mL

(c) Except as provided in par. (d) and sub. (4), no person may sell or offer for sale, any wine in any container size other than the following:

1. 3 L
2. 1.5 L
3. 1 L
4. 750 mL
5. 500 mL
6. 375 mL
7. 355 mL
8. 250 mL
9. 200 mL
10. 187 mL
11. 100 mL
12. 50 mL

(d) Notwithstanding par. (c), wine may be sold or offered for sale in containers of 4 liters or larger if the containers are in quantities of whole liters.

Example: Wine may sold in quantities of 4 liters, 5 liters, 6 liters, etc.

(3) Except as provided in sub. (4), possession of a container that is in violation of sub. (1) or (2) by a licensee or permittee is prima facie evidence that the container is offered for sale.

(4)(a) Manufacturers and rectifiers may have in their possession distilled spirits in containers greater than 1.75 liters in size for purposes of manufacturing or rectifying or for sale to other manufacturers, rectifiers, or wineries in Wisconsin or in interstate commerce.

(b) This section does not apply to "Class B" licensees selling mixed drinks from a bulk container that is in compliance with s. [125.51\(3\)\(bg\)](#), Stats.

(c) This section does not apply to alcohol intended for industrial, medicinal, scientific, or mechanical purposes.

Tax 7.42 Empty containers. (1) The regulations in this section are created for purposes of compliance with s. 125.68(8), Stats.

(2) Any person who sells or offers for sale distilled spirits, including any agent or employee of such person, shall, as soon as such container is emptied, scratch, deface or mutilate any label attached thereto in such a manner that the label cannot be used. The requirement that labels be defaced shall not apply to labels placed on ceramic commemorative containers and other uniquely designed decanters.

(3) No person who sells or offers for sale, distilled spirits, including any agent or employee of such person, shall fill, or cause to be filled, any container previously used to store distilled spirits. Such containers, except ceramic commemorative containers and other uniquely designed decanters and containers retained for delivery or collection for recycling through a process which will result in rendering them unusable as containers, shall be broken and destroyed immediately upon being emptied of their original contents.

(4) Empty liquor containers retained for recycling purposes shall have all labels scratched, defaced, or mutilated, shall be stored in containers marked "For recycling only," and shall be removed from any retail licensed or permitted premises within 10 days.

Tax 7.43 Small cooperative wholesalers. (1) PURPOSE. The purpose of this section is to set forth the requirements for the creation and operation of small cooperative wholesalers, under s. [125.545](#), Stats.

(2) **BYLAWS FOR COOPERATIVE WHOLESALERS.** Bylaws filed by a cooperative wholesaler shall contain all the following information:

(a) Reasonable membership requirements that recognize the cooperative wholesaler's duty to negotiate in good faith with manufacturers, rectifiers, and wineries that seek to sell products and to diligently ensure that distribution channels are available for the sale of intoxicating liquor from small wineries and small manufacturers.

(b) A statement that any applicants meeting such requirements be admitted into the cooperative.

(c) A description of the rights and responsibilities of members.

(d) The process for the election of the board of directors.

(e) The plans for a membership meeting.

(f) Whether the cooperative will allow nonmembers to purchase preferred stock.

(3) SUBMISSION OF APPLICATION FOR COOPERATIVE WHOLESALERS. The bylaws created under s. 125.545(3)(a)(1), Stats., and that contain the information outlined in sub. (2), shall be submitted to the division with the application for a wholesaler's permit.

(4) INTEREST RESTRICTIONS. A cooperative wholesaler may provide compensation for reasonable expenses of manufacturer, rectifier, and winery owners and employees acting as volunteers in the sale and distribution of intoxicating liquor by the cooperative. Reasonable expenses may not include compensation for time spent acting as a volunteer.

(5) RENEWAL OF COOPERATIVE WHOLESALER PERMIT. The cooperative wholesaler shall provide the division with a biennial report with its application for wholesaler permit renewal. The biennial report shall summarize the sales quantity and product data for all intoxicating liquor industry trade goods sold by the cooperative wholesaler.

Tax 7.44 Salesperson. (1) No person shall solicit orders for wholesale sales of intoxicating liquor for future delivery on behalf of a manufacturer, rectifier, winery, or wholesaler unless the person first holds a salesperson's permit under s. [125.65](#), Stats. Any salesperson actively engaging in such sales or solicitation shall have, at all times, a physical copy of the salesperson's permit issued by the division in their possession.

(2) Samples of intoxicating liquor carried by salespersons shall be Wisconsin tax paid merchandise complying with requirements under s. [139.06](#), Stats.

(3) A salesperson's permit authorizes the soliciting of orders of selling for future delivery at wholesale. Retail sales are prohibited.

Tax 7.45 Procedure for apportionment of costs of administration of s. 125.69(4)(e), Stats.

(1) All direct and indirect costs of administering s. 125.69 (4)(e), Stats., including costs of supplies, equipment, rent and clerical, investigational, administrative and supervisory help, shall be borne by the intoxicating liquor permittees. The aggregate of such costs shall be determined by the division semiannually and shall be prorated by it among the permittees at any time licensed in each period covered. Each such permittee shall be billed its share of such aggregate costs, and such bill shall be paid within 10 days of the billing date.

(2) The costs of administration for each 6-month period shall be prorated among the permittees licensed in such period on the basis of estimated dollar sales to retailers based upon reported gallons and liters of wine and liquor sold to retailers by each permittee. Whenever the sales of a permittee have not been reported to the division, the division shall estimate such sales for purposes of such proration.

Tax 7.46 Samples. (1) Manufacturers, rectifiers, and wineries shall attach a memo invoice stating the quantity and package size by type and brand when shipping to their representatives, intoxicating liquor into this state for the purpose of free samples under s. 125.69(9), Stats.

(2) Any out-of-state manufacturer shall possess a permit under s. [125.58](#), Stats., prior to shipping into this state any liquor samples to their representatives.

(3) The memo invoice in sub. (1), shall bear the words, "Applicable state tax paid. Not for resale." All sample liquor is subject to the Wisconsin liquor excise tax. The tax paid by the out-of-state shipper shipping or causing the liquor to be shipped into this state shall be remitted no later than the 15th day of the month following the shipment.

SECTION 2: Chapter Tax 8 is repealed and recreated to read:

CHAPTER TAX 8

ALCOHOL BEVERAGE TAXATION

Tax 8.01 Authority and purpose. This chapter is promulgated pursuant to ss. [139.08](#) and [227.11 \(2\) \(a\)](#), Stats., to carry out the secretary of revenue (“secretary”)’s duties to administer alcohol beverage taxes under subch. I of ch. 139, Stats., and to collect and keep a record of alcohol beverage taxes collected.

Tax 8.02 Definitions. Unless otherwise provided, the words and phrases in this chapter have the same meanings as provided in s. [125.02](#) or [139.01](#), Stats.

Tax 8.03 Tax forms and filing. (1) FORMS. The department shall provide official forms for filing alcohol beverage tax returns, reports, and refund claims, under s. 139.01(2r), Stats. Except as approved by the department, tax returns, reports, and refund claims may only be filed using these official forms.

Note: The official forms for filing alcohol beverage returns and refund claims are available on the department's website.

(2) FILING FORMS. (a) Forms filed with the department shall be submitted as prescribed by the department or by filing them electronically by means prescribed by the department.

(b) The secretary of revenue may waive the requirement to file electronically when the secretary determines that the requirement causes an undue hardship, if the person does all of the following:

1. Requests the waiver in writing.

Note: Written requests should be e-mailed to DORExciseTaxpayerAssistance@wisconsin.gov, faxed to (608) 261-7049, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-107, PO Box 8900, Madison WI 53708-8900.

2. Clearly indicates why the requirement causes an undue hardship.

(c) In determining whether the requirement to file electronically causes an undue hardship, the secretary of revenue may consider any of the following factors:

1. Unusual circumstances that may prevent the person from filing electronically.

Example: The person does not have access to a computer that is connected to the internet.

2. Any other factor that the secretary determines is pertinent.

Tax 8.04 Liquor tax. (1) PURPOSE. This section clarifies the tax liability on all sales of intoxicating liquor shipped into Wisconsin under s. [139.06 \(1\) \(b\)](#), Stats., including foreign country imports.

(2) IMPOSITION. All intoxicating liquor, including wine, shipped to a permittee located in Wisconsin shall be sold with the tax imposed under s. 139.03, Stats., included in the selling price except as provided in pars. (a) to (d):

(a) Shipments in bulk to a rectifier or winery. The tax liability is incurred by the permittee doing the rectifying and bottling of the intoxicating liquor at the time of the first sale in Wisconsin.

(b) Shipments from a foreign country if the “importer of record” as recorded on U.S. customs document is a Wisconsin wholesaler permittee located in Wisconsin. However, if the “importer of record” is the holder of an out-of-state shipper's permit, the tax payment is due from the out-of-state shipper regardless of whether the shipment is released from U.S. customs bond within or outside Wisconsin.

(c) Merchandise which is destined to be shipped outside Wisconsin in interstate commerce and is properly labeled as "interstate merchandise."

(d) Shipments of merchandise to the following types of permit holders:

1. Sacramental wine permittees.
2. Wholesale alcohol permittees, but only if the alcohol shipped is at least 190 proof.
3. Medicinal alcohol permittees.
4. Industrial alcohol permittees.
5. Industrial wine permittees.

Tax 8.05 Refunds. (1) DESTRUCTION OR RETURN OF ALCOHOL BEVERAGES IN WISCONSIN. (a) A brewery, brewpub, manufacturer, rectifier, winery, or wholesaler properly authorized by Wisconsin who possesses alcohol beverages in sealed containers, whole cases, or full kegs that are spoiled or unfit to drink may file a claim for a tax refund under s. [139.10](#), Stats., with the department.

(b) A refund for the amount of the tax applying to the alcohol beverages may be made providing the claimant files a written notice to the department of intent to destroy the beverages at least 10 days prior to destroying such beverages.

(c) The department, upon receipt of the notice of intent, may inspect the alcohol beverages prior to destruction by notifying the claimant prior to the expiration of the 10-day period.

(d) If the department does not notify the claimant of its intent to inspect before the end of the 10-day period, the claimant may destroy the alcohol beverages and file a claim for refund. The claimant shall file the claim for a tax refund in the form and manner provided by the department.

(2) RETURNS TO AN OUT-OF-STATE SOURCE. (a) A brewery, brewpub, manufacturer, rectifier, winery, or wholesaler authorized by Wisconsin, who possesses alcohol beverages in sealed containers, whole cases, or full kegs that are spoiled or unfit to drink may file a written notice to the department of intent to return such beverages to an out-of-state source at least 10 days prior to shipping the beverages.

(b) The department, upon receipt of the notice of intent to return, may inspect the alcohol beverages prior to shipment by notifying the claimant prior to the expiration of the 10-day period. If the department does not notify the claimant of its intent to inspect before the end of the 10-day period, the alcohol beverages may be returned, and the out-of-state permittee may file a claim for a tax refund under s. [139.10](#), Stats. or take an appropriate amount of credit against taxable shipments into Wisconsin for that month. The Wisconsin brewery, brewpub, manufacturer, rectifier, winery, or wholesaler will report the transaction as a tax-included export.

Tax 8.06 Inventory records. (1) This section clarifies recordkeeping requirements for purposes of compliance with s. [139.11](#), Stats.

(2) A Wisconsin brewery, brewpub, manufacturer, rectifier, wholesaler, or winery is allowed to maintain separate inventory of untaxed and taxed alcohol beverages on the same premises. Detailed records of movement into and out of untaxed inventory shall be maintained. Failure to maintain these records or to properly segregate the untaxed inventory from the taxed inventory will make the untaxed inventory immediately subject to the provisions of ss. 139.02 to 139.06, Stats.

(3) Invoices and records maintained under ss. Tax 7.08 and 7.18, shall be available for inspection during normal business hours by representatives of the department for purposes of compliance with this section and s. [139.11](#), Stats.

Tax 8.07 Sales outside of Wisconsin. (1) The tax imposed under ss. [139.02](#) and [139.03](#), Stats., upon the sale of intoxicating liquor and fermented malt beverages within Wisconsin does not apply to alcohol beverages that are shipped from within Wisconsin to a point outside Wisconsin, under s. 139.04 (5), Stats. Brewers, brewpubs, manufacturers, rectifiers, wineries, and wholesalers need not pay the tax on alcohol beverages that are sold and shipped outside Wisconsin. The burden of proof, however, is at all times upon the Wisconsin brewer, brewpub, manufacturer, rectifier, winery, or wholesaler to show that the alcohol beverages actually went into interstate commerce.

(2) Wisconsin brewers, brewpubs, manufacturers, rectifiers, wineries, and wholesalers claiming exemption from the tax imposed under ss. [139.02](#) and [139.03](#), Stats., on the ground that shipments or deliveries were made in interstate commerce shall certify, under oath, one of the following:

(a) That the persons receiving such shipments or deliveries outside Wisconsin at the address stated are licensed to receive the same.

(b) That they are in possession of bills of lading, waybills, freight bills or other evidence of shipment issued by common carriers operating in Wisconsin and that such shipments or deliveries were made to persons having an actual licensed place of business in the foreign state.

(3) No Wisconsin brewer, brewpub, manufacturer, rectifier, winery, or wholesaler shall receive an exemption from the tax imposed under ss. [139.02](#) and [139.03](#), Stats., on the sale of intoxicating liquor or fermented malt beverage where such alcohol beverage is sold and shipped into any state or territory where the importation or sale of such alcohol beverage is prohibited by state or federal law; nor will an exemption be allowed on alcohol beverages sold and shipped into other states to a purchaser who, under the laws of the state in which such purchaser is located, cannot lawfully receive the same.

Tax 8.08 Contract production. (1) (a) This section applies to contract production agreements entered between a producer and an out-of-state recipe supplier under s. [125.21 \(3\) \(b\) 3.](#), Stats. All other contract production agreements are governed by s. [125.21 \(3\)](#), Stats.

(b) If the alcohol beverages created under a contract production agreement between parties outlined in s. [125.21 \(3\) \(b\) 3.](#), Stats. will be sold into interstate commerce, then s. Tax 8.07 applies, and the contract producer shall report the production in the report filed under s. [139.11 \(2\)](#), Stats.

Example: Oregon Distillery, an out-of-state recipe supplier, contracts with Wisconsin Distillery to bottle intoxicating liquor for Oregon Distillery. All finished intoxicating liquor will be shipped directly from Wisconsin Distillery to Oregon Distillery's out-of-state location, with no product remaining in Wisconsin. In this case, Wisconsin Distillery shall file the tax return for the bottled intoxicating liquor to show production, but no excise tax is due since all product is shipped into interstate commerce. Oregon Distillery is not required to hold any Wisconsin production permit.

Tax 8.09 Transfers of alcohol beverages between production premises and full-service retail outlet. Alcohol beverages removed from the production premises for transfer to a full-service retail outlet established by a brewer under s. 125.29 (7), Stats., a manufacturer or rectifier under s. 125.52 (4), Stats., or a winery under s. 125.53 (3), Stats., is a removal for consumption or sale and the tax under s. [139.02](#) or [139.03](#), Stats., shall be imposed at the time of transfer.

SECTION 3. EFFECTIVE DATE. This rule takes effect upon publication in the state newspaper, and shall remain in effect for 150 days, as provided in s. 227.24 (1) (c), Stats., subject to extensions under s. 227.24 (2), Stats., except as follows:

(1) The treatment of ss. Tax 7.04 (7) takes effect on December 16, 2024, and shall remain in effect for 150 days, as provided in s. 227.24 (1) (c), Stats., subject to extensions under s. 227.24 (2), Stats.

END RULE TEXT

DEPARTMENT OF REVENUE

Dated: _____

By: _____
David M. Casey
Secretary of Revenue

DIVISION OF ALCOHOL BEVERAGES

Dated: _____

By: _____
Mark Meyer
Division Administrator