

CHAPTER 297G

LIQUOR TAXATION

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297G.01 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of this chapter, the following terms have the meanings given them unless the language or context clearly indicates that a different meaning is intended.

Subd. 2. **Alcoholic beverage.** "Alcoholic beverage" is any beverage containing more than one-half of one percent alcohol by volume.

Subd. 3. **Brewer.** "Brewer" is a person who manufactures malt liquor for sale.

Subd. 3a. **Cider.** "Cider" means a product that contains not less than one-half of one percent nor more than seven percent alcohol by volume and is made from the alcoholic fermentation of the juice of apples. Cider includes, but is not limited to, flavored, sparkling, and carbonated cider.

Subd. 4. **Collector.** "Collector" is a person who collects commemorative bottles for their use and enjoyment as collector's items and not for the consumption of the beverage contained in them. The term does not include licensed wholesalers or retailers of alcoholic beverages.

Subd. 5. **Commemorative bottles.** "Commemorative bottles" are ceramic commemorative bottles or other specially designed decanters which have value as collector's items and which contain an alcoholic beverage.

Subd. 6. **Commissioner.** "Commissioner" is the commissioner of revenue.

Subd. 7. **Distilled spirits.** "Distilled spirits" is intoxicating liquors, including ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures, for nonindustrial use.

Subd. 8. **Fermented malt beverages.** "Fermented malt beverages" is any beer, ale, or other beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume.

Subd. 9. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 1996.

Subd. 10. **Intoxicating liquor.** "Intoxicating liquor" is ethyl alcohol, distilled spirits, fermented, spirituous, vinous, and fermented malt beverages containing more than 3.2 percent of alcohol by weight.

Subd. 11. **Liqueur-filled candy.** "Liqueur-filled candy" is any confectionery containing more than one-half of one percent alcohol by volume in liquid form that is intended for or capable of beverage use.

Subd. 12. **Liquor Act.** For purposes of this chapter, the terms defined in section 340A.101, have the meanings given them in that section except as provided in this section.

Subd. 13. **Manufacturer.** "Manufacturer" is a person who, by a process of manufacturing, fermenting, brewing, distilling, refining, rectifying, blending, or by the combination of different materials, prepares or produces intoxicating liquor for sale.

Subd. 14. **Miniatures.** "Miniatures" are containers of distilled spirits of two fluid ounces or less or 50 milliliters or less.

Subd. 15. **Person.** "Person" means an individual or any entity engaged in the sale of distilled spirits, wine, or fermented malt beverages.

Subd. 16. **Retailer.** "Retailer" means a person engaged in this state in the business of selling, or offering to sell, distilled spirits, wine, or fermented malt beverages.

Subd. 17. **Table or sparkling wine.** "Table or sparkling wine" is a beverage made without rectification or fortification and containing not more than 25 percent alcohol by volume and made by the fermentation of grapes, grape juice, other fruits, or honey.

Subd. 18. **3.2 percent malt liquor.** "3.2 percent malt liquor" is a fermented malt beverage containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight.

Subd. 19. **Wholesaler.** "Wholesaler" is a person who sells alcoholic beverages to persons to whom sale is permitted under section 340A.310, from a stock maintained in a warehouse in the state.

Subd. 20. **Wine.** "Wine" is the product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake, in each instance containing not less than one-half of one percent nor more than 24 percent alcohol by volume for nonindustrial use. Wine does not include distilled spirits as defined in subdivision 7.

History: 1997 c 179 art 1 s 1; 1998 c 389 art 8 s 22

297G.02 ADMINISTRATION.

Subdivision 1. **Enforcement responsibility.** The commissioners of public safety and revenue shall enforce and administer the provisions of this chapter.

Subd. 2. **Nonapplicability.** This chapter does not apply to:

- (1) medicines intended for therapeutic purposes and not intended as a beverage;
- (2) industrial alcohol designed for mechanical, chemical, scientific, pharmaceutical, or industrial purposes; or
- (3) nonpotable compounds or preparations containing alcohol.

Subd. 3. **Powers of commissioner of revenue.** The commissioner, or duly authorized agents, may conduct investigations, inquiries, and hearings under this chapter and, in connection with such investigations, inquiries, and hearings, the commissioner and the duly authorized agents shall have all the powers conferred upon the commissioner and the commissioner's examiners by section 270.06, and the provisions of that section shall apply to all such investigations, inquiries, and hearings.

Subd. 4. **Expenses of administration.** Expenses for the administration of this chapter shall be paid out of appropriations to the commissioner for the administration of this chapter and shall include fees and expenses incurred by the attorney general and any county attorney in litigation in connection with the enforcement of this chapter. Expenses also include all court costs and expenses.

History: 1997 c 179 art 1 s 2

297G.03 DISTILLED SPIRITS AND WINE; RATE OF TAX.

Subdivision 1. **General rate; distilled spirits and wine.** The following excise tax is imposed on all distilled spirits and wine manufactured, imported, sold, or possessed in this state:

	Standard	Metric
(a) Distilled spirits, liqueurs, cordials, and specialties regardless of alcohol content (excluding ethyl alcohol)	\$5.03 per gallon	\$1.33 per liter

(b) Wine containing 14 percent or less alcohol by volume (except cider as defined in section 297G.01, subdivision 3a)	\$.30 per gallon	\$.08 per liter
(c) Wine containing more than 14 percent but not more than 21 percent alcohol by volume	\$.95 per gallon	\$.25 per liter
(d) Wine containing more than 21 percent but not more than 24 percent alcohol by volume	\$1.82 per gallon	\$.48 per liter
(e) Wine containing more than 24 percent alcohol by volume	\$3.52 per gallon	\$.93 per liter
(f) Natural and artificial sparkling wines containing alcohol	\$1.82 per gallon	\$.48 per liter
(g) Cider as defined in section 297G.01, subdivision 3a	\$.15 per gallon	\$.04 per liter

In computing the tax on a package of distilled spirits or wine, a proportional tax at a like rate on all fractional parts of a gallon or liter must be paid, except that the tax on a fractional part of a gallon less than 1/16 of a gallon is the same as for 1/16 of a gallon.

Subd. 2. **Tax on miniatures; distilled spirits.** The tax on miniatures is 14 cents per bottle.

Subd. 3. **Tax is metric.** The metric tax is imposed on all products taxable under this section when the net contents are stated in metric units of measure. The commissioner may establish by rule a date and procedure for the conversion of excise tax computation and reporting from rates expressed in gallons to rates expressed in metric volumes. The official conversion factor is one liter equals 0.264172 United States gallons.

Subd. 4. **Bottle tax.** A tax of one cent is imposed on each bottle or container of distilled spirits and wine except as provided in 297G.07, subdivision 3. The wholesaler is responsible for the payment of this tax when the bottles of distilled spirits and wine are removed from inventory for sale, delivery, or shipment.

History: 1997 c 179 art 1 s 3; 1998 c 389 art 8 s 23

297G.04 FERMENTED MALT BEVERAGES; RATE OF TAX.

Subdivision 1. **Tax imposed.** The following excise tax is imposed on all fermented malt beverages that are imported, directly or indirectly sold, or possessed in this state:

(1) on fermented malt beverages containing not more than 3.2 percent alcohol by weight, \$2.40 per 31-gallon barrel; and

(2) on fermented malt beverages containing more than 3.2 percent alcohol by weight, \$4.60 per 31-gallon barrel.

For fractions of a 31-gallon barrel, the tax rate is calculated proportionally.

Subd. 2. **Tax credit.** A qualified brewer producing fermented malt beverages is entitled to a tax credit of \$4.60 per barrel on 25,000 barrels sold in any fiscal year beginning July 1, regardless of the alcohol content of the product. Qualified brewers may take the credit on the 18th day of each month, but the total credit allowed may not exceed in any fiscal year the lesser of:

- (1) the liability for tax; or
- (2) \$115,000.

For purposes of this subdivision, a "qualified brewer" means a brewer, whether or not located in this state, manufacturing less than 100,000 barrels of fermented malt beverages in the calendar year immediately preceding the calendar year for which the credit under this subdivision is claimed. In determining the number of barrels, all brands or labels of a brewer must be combined. All facilities for the manufacture of fermented malt beverages owned or controlled by the same person, corporation, or other entity must be treated as a single brewer.

History: 1997 c 179 art 1 s 4

297G.05 USE TAX; RATE OF TAX.

Subdivision 1. **Wine and distilled spirits.** A tax is imposed on the use or storage by consumers of wine and distilled spirits in this state, and on such consumers, at the rates specified in section 297G.03, subdivision 1.

Subd. 2. **Fermented malt beverages.** A tax is imposed on the use or storage by consumers of fermented malt beverages in this state, and on such consumers, at the rates specified in section 297G.04, subdivision 1.

Subd. 3. **Tax provisions applicable to consumers.** All of the provisions of this chapter relating to the correction of returns, deficiency assessments, protests, hearings, interest and penalties, and collection of taxes, apply to consumers.

History: 1997 c 179 art 1 s 5

297G.06 TAX AS PERSONAL DEBT.

The tax imposed by this chapter, and interest and penalties imposed with respect to it, is a personal debt of the person required to file a return from the time the liability for it arises, regardless of when the time for payment of the liability occurs. In the case of the executor or administrator of the estate of a decedent and in the case of any fiduciary, the debt is that of the person in the person's official or fiduciary capacity only, unless the person has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the tax, interest, and penalties. In that case, the person is personally liable for the deficiency.

History: 1997 c 179 art 1 s 6

297G.07 EXEMPTIONS FROM TAX.

Subdivision 1. **Exemptions.** The following are not subject to the excise tax:

(1) Sales by a manufacturer, brewer, or wholesaler for shipment outside the state in interstate commerce.

(2) Alcoholic beverages sold or transferred between Minnesota wholesalers.

(3) Sales to common carriers engaged in interstate transportation of passengers, except as provided in this chapter.

(4) Malt beverages served by a brewery for on-premise consumption at no charge, or distributed to brewery employees for on-premise consumption under a labor contract.

(5) Shipments of wine to Minnesota residents under section 340A.417.

(6) Fruit juices naturally fermented or beer naturally brewed in the home for family use.

(7) Sales of wine for sacramental purposes under section 340A.316.

(8) Alcoholic beverages sold to authorized manufacturers of food products or pharmaceutical firms. The alcoholic beverage must be used exclusively in the manufacture of food products or medicines. For purposes of this clause, "manufacturer" means a person who manufactures food products intended for sale to wholesalers or retailers for ultimate sale to the consumer.

(9) Liqueur-filled candy.

(10) Sales to a federal agency, that the state of Minnesota is prohibited from taxing under the constitution or laws of the United States or under the constitution of Minnesota.

(11) Sales to Indian tribes as defined in section 297G.08.

(12) Shipments of intoxicating liquor from foreign countries to diplomatic personnel of foreign countries assigned to service in this state.

Subd. 2. Importation by individuals. (a) A person, other than a person under the age of 21 years, entering Minnesota from another state may have in possession one liter of intoxicating liquor or 288 ounces of fermented malt beverages without the required payment of the Minnesota excise tax, provided the alcoholic beverages accompany the person into this state and will not be offered for sale or used for any commercial purposes.

(b) A person, other than a person under the age of 21 years, entering Minnesota from a foreign country may have in possession four liters of intoxicating liquor or ten quarts (320 ounces) of fermented malt beverages without the required payment of the Minnesota excise tax, provided the alcoholic beverages accompany the person into this state and will not be offered for sale or used for any commercial purposes.

(c) A collector of commemorative bottles, other than a person under the age of 21 years, entering Minnesota from another state may have in possession 12 or fewer commemorative bottles without the required payment of the Minnesota excise tax.

(d) This subdivision does not apply to consignments of alcoholic beverages shipped into this state by holders of Minnesota import licenses or Minnesota manufacturers and wholesalers when licensed by the commissioner of public safety or to common carriers with licenses to sell intoxicating liquor in more than one state.

Subd. 3. Exemptions from bottle tax. The following are exempt from the bottle tax:

- (1) miniatures of distilled spirits and wines;
- (2) containers of fermented malt beverage;
- (3) containers of intoxicating liquor or wine holding less than 200 milliliters;
- (4) containers of alcoholic beverages sold and shipped to dealers, wineries, or distillers in other states;
- (5) containers of alcoholic beverages sold to other Minnesota wholesalers;
- (6) containers of alcoholic beverages sold to common carriers engaged in interstate commerce;
- (7) containers of wine intended exclusively for sacramental purposes;
- (8) containers of alcoholic beverages sold to authorized food processors or pharmaceutical firms for use exclusively in the manufacturing of food products or medicines; and

(9) sales to a federal agency, that the state of Minnesota is prohibited from taxing under the constitution or laws of the United States or under the constitution of Minnesota.

History: 1997 c 179 art 1 s 7; 2002 c 377 art 9 s 13

297G.08 SALES TO INDIAN TRIBES.

Subdivision 1. Wholesalers. A wholesaler may set aside the part of the wholesaler's stock necessary to make sales to the established governing body of an Indian tribe recognized by the United States Department of the Interior, without paying the tax required by this chapter. The amount of untaxed stock that wholesalers may deliver to an Indian reservation is limited to amounts necessary to meet the personal consumption needs of qualified purchasers. When shipping or delivering untaxed stock to an Indian tribal organization, the wholesaler shall make a true duplicate invoice. The invoice must show the complete details of the sale or delivery. The wholesaler shall send the duplicate to the commissioner not later than the 18th day of the following calendar month. If a wholesaler fails to comply with the requirements of this section,

the commissioner shall revoke the permission granted to the wholesaler to keep a stock of untaxed goods.

Subd. 2. **Retailers.** Retailers who are Indian tribal organizations may keep untaxed stock intended for sale to qualified purchasers.

Subd. 3. **Qualified purchasers.** A qualified purchaser of untaxed liquor means only an enrolled member of the Indian tribe that is offering the liquor for sale.

Subd. 4. **Sales to nonqualified buyers.** A retailer who sells or otherwise disposes of untaxed liquor other than to a qualified purchaser shall collect from the buyer or transferee the tax imposed by this chapter and remit the tax to the department of revenue at the same time and manner as required by this chapter. If the retailer fails to collect the tax from the buyer or transferee, or fails to remit the tax, the retailer is personally responsible for the tax and the commissioner may seize any liquor destined to be delivered to the retailer. The procedures outlined in section 297G.20 apply to the seized liquor. The proceeds of the sale of the liquor may be applied to any tax liability owed by the retailer after deducting all costs and expenses.

This section does not relieve the buyer or possessor of untaxed liquor from personal liability for the tax.

History: 1997 c 179 art 1 s 8

297G.09 RETURNS; PAYMENT OF TAX.

Subdivision 1. **Monthly returns; manufacturers, wholesalers, brewers, or importers.** On or before the 18th day of each calendar month following the month in which a licensed manufacturer or wholesaler first sells wine and distilled spirits within the state, or a brewer or importer first sells or imports fermented malt beverages, or a wholesaler knowingly acquires title to or possession of untaxed fermented malt beverages, the licensed manufacturer, wholesaler, brewer, or importer liable for the excise tax must file a return with the commissioner, and in addition must keep records and render reports as required by the commissioner. Returns must be made in a form and manner prescribed by the commissioner, and must contain any other information required by the commissioner. Returns must be accompanied by a remittance for the full unpaid tax liability. Returns must be filed regardless of whether a tax is due.

Subd. 2. **Monthly use tax returns; consumers.** On or before the 18th day of each calendar month, a consumer who has acquired title to or possession of wine, distilled spirits, or fermented malt beverages for use or storage in this state, upon which wine, distilled spirits, or fermented malt beverages the tax imposed by this chapter has not been paid, shall file a return with the commissioner in the month following the month in which the consumer obtains title to or possession of the wine, distilled spirits, or fermented malt beverages. Returns must be made in a form and manner prescribed by the commissioner and must contain any other information required by the commissioner. Returns must be accompanied by a remittance for the full unpaid tax liability.

Subd. 3. **Common carrier returns.** A common carrier engaged in interstate transportation of passengers must file monthly reports together with the tax payment on the sale of alcoholic beverages sold in Minnesota. The report and payment must be filed by the 18th day of the month following the month in which the sale took place. A common carrier is permitted to use a formula for the allocation of the total sales of alcoholic beverages among states on the basis of passenger miles in each state or some other method of allocation if written approval is received from the commissioner.

Subd. 4. **Extensions.** When in the commissioner's judgment, good cause exists, the commissioner may extend the time for filing liquor tax returns for not more than six months. The commissioner may require the taxpayer to file a tentative return when the regularly required return is due, and pay a tax on the basis of the tentative return at the times required for the payment of taxes on the basis of the regularly required return.

Subd. 5. [Repealed, 2000 c 490 art 10 s 22]

Subd. 6. **Electronic payments.** A licensed brewer, importer, or wholesaler having an excise tax liability of \$120,000 or more during a fiscal year ending June 30 must remit all excise tax liabilities in the subsequent calendar year by electronic means.

Subd. 7. **Order payments credited.** All payments received may, in the discretion of the commissioner, be credited first to the oldest liability not secured by a judgment or lien, but in all cases must be credited first to penalties, next to interest, and then to the tax due.

Subd. 8. **Interest.** The amount of tax not timely paid, together with any penalty imposed by this chapter, bears interest at the rate specified in section 270.75 from the time the tax should have been paid until paid. Any interest and penalty is added to the tax and collected as a part of it.

History: 1997 c 179 art 1 s 9; 1Sp2001 c 5 art 17 s 18

297G.10 DEPOSIT OF PROCEEDS.

All tax revenues and other receipts payable to the state under this chapter must be paid into the state treasury and credited to the general fund.

History: 1997 c 179 art 1 s 10

297G.11 INFORMATIONAL REPORTS.

The following persons shall file with the commissioner a monthly informational report in the form and manner prescribed by the commissioner:

- (1) a manufacturer, wholesaler, and importer licensed to ship distilled spirits or wine into Minnesota;
- (2) a person who manufactures distilled spirits or wine in Minnesota;
- (3) any other person who imports distilled spirits or wine into Minnesota;
- (4) a person who possesses, receives, stores, or warehouses distilled spirits or wine in Minnesota, upon which the tax imposed by this chapter has not been paid; and
- (5) a person who possesses, receives, stores, or warehouses distilled spirits or wine in Minnesota, which are required to give bond as required by the Internal Revenue Code, subtitle E, chapter 51.

No payment of any tax is required to be remitted with this report. The report must be filed on or before the tenth day following the end of each calendar month, regardless of whether or not the person shipped, manufactured, possessed, received, stored, or warehoused any distilled spirits or wine into or within Minnesota during the previous month, unless the commissioner determines that a longer filing period is appropriate for a particular person. A person failing to file this report is subject to the civil or criminal penalties imposed by this chapter.

This section does not apply to the lawful importation of wine and distilled spirits under section 297G.07, subdivision 2, nor to any lawful manufacture of wine or distilled spirits within the state for personal consumption.

History: 1997 c 179 art 1 s 11

297G.12 REFUNDS.

Subdivision 1. **Overpayment of tax.** An overpayment of the tax imposed under this chapter may be refunded to the taxpayer, provided that the claim for refund is filed within the time prescribed under section 297G.16.

Subd. 2. **Products destroyed.** The commissioner may refund to a taxpayer the amount of tax paid under this chapter on intoxicating liquor or fermented malt beverages which become unfit for human consumption and are destroyed under an order by a federal, state, or local agency while being held for sale by a licensed retailer. The destruction must meet the requirements of the environmental laws of this state.

Subd. 3. **Wholesaler refund for breakage of inventory.** The commissioner may refund to a wholesaler the amount of tax paid under this chapter for the breakage of

inventory not subject to reimbursement from any insurance proceeds. The commissioner may prescribe the method of proof for obtaining the refund.

Subd. 4. **Retailer refund for breakage of inventory.** Refunds for breakage of inventory may be made to retailers only if satisfactory proof is presented to the commissioner by the wholesaler and the licensed retailer that the retailer was not indemnified by insurance for the tax. The commissioner may prescribe the method of proof required for obtaining the refund.

Subd. 5. **Bad debts.** The commissioner may adopt rules providing a refund of the tax paid under this chapter on intoxicating liquor or wine if the tax paid qualifies as a bad debt under section 166(a) of the Internal Revenue Code.

Subd. 6. **Credit against tax.** The commissioner may credit the amount determined under this section against taxes otherwise payable under this chapter by the taxpayer.

Subd. 7. **Source of refund.** There is appropriated annually from the general fund to the commissioner the sums necessary to make the refunds provided by this section.

History: 1997 c 179 art 1 s 12

297G.13 INSPECTION RIGHTS.

The commissioner of public safety or the commissioner of revenue, or their duly authorized employees, may, at any reasonable time, without notice and without a search warrant, enter in and upon a licensed premises, and examine the books, papers, and records of a brewer, manufacturer, wholesaler, or retailer for the purpose of determining whether the excise tax has been paid, and may in addition inspect any premises where fermented malt beverages are manufactured, sold, offered for sale, possessed, or stored for the purpose of determining whether the party is in full compliance with the provisions of this chapter.

History: 1997 c 179 art 1 s 13

297G.14 EXAMINATIONS AND AUDITS.

Subdivision 1. **Examination of taxpayer.** To determine the accuracy of a return or report, or for the purpose of collection, or in fixing liability or verifying information regarding any tax under this chapter, the commissioner may make reasonable examinations or investigations of a taxpayer's place of business, tangible personal property, equipment, computer systems and facilities, pertinent books, records, papers, vouchers, computer printouts, accounts, and documents.

Subd. 2. **Access to records of other persons in connection with examination of taxpayer.** When conducting an investigation or an audit of a taxpayer, or for the purpose of collection, or in fixing liability or verifying information regarding any tax under this chapter, the commissioner may examine, except where privileged by law, the relevant records and files of a person, business, institution, financial institution, state agency, agency of the United States government, or agency of any other state where permitted by statute, agreement, or reciprocity. The commissioner may compel production of these records by subpoena. A subpoena may be served directly by the commissioner.

Subd. 3. **Power to compel testimony.** In the administration of any tax under this chapter, the commissioner may:

(1) administer oaths or affirmations and compel by subpoena the attendance of witnesses, testimony, and the production of a person's pertinent books, records, papers, and other data for inspection and copying;

(2) examine under oath or affirmation any person regarding the business of a taxpayer concerning any relevant matter incident to the administration of any tax under this chapter. The fees of witnesses required by the commissioner to attend a hearing are equal to those allowed to witnesses appearing before courts of this state. The fees must be paid in the manner provided for the payment of other expenses incident to the administration of any tax under this chapter; and

(3) in addition to other remedies that may be available, bring an action in equity by the state against a taxpayer for an injunction ordering the taxpayer to file a complete and proper return or amended return. The district courts of this state have jurisdiction over the action and disobedience of an injunction issued under this clause may be punished as a contempt of district court.

Subd. 4. Third-party subpoena where taxpayer's identity is known. An investigation may extend to a person that the commissioner determines has access to information that may be relevant to the examination or investigation. When a subpoena requiring the production of records as described in subdivision 2 is served on a third-party recordkeeper, written notice of the subpoena must be mailed to the taxpayer and to any other person who is identified in the subpoena. The notices must be given within three days of the day on which the subpoena is served. Notice to the taxpayer required by this section is sufficient if it is mailed to the last address on record with the commissioner.

The provisions of this subdivision relating to notice to the taxpayer or other parties identified in the subpoena do not apply if there is reasonable cause to believe that the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

Subd. 5. Third-party subpoena where taxpayer's identity is not known. A subpoena that does not identify the person or persons whose tax liability is investigated may be served only if:

(1) the subpoena relates to the investigation of a particular person or an ascertainable group or class of persons;

(2) there is reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with the tax laws administered by the commissioner;

(3) the information sought to be obtained from the examination of the records, and the identity of the person or persons with respect to whose liability the subpoena is issued, is not readily available from other sources;

(4) the subpoena is clear and specific concerning the information sought to be obtained; and

(5) the information sought to be obtained is limited solely to the scope of the investigation.

The party served with a subpoena that does not identify the person or persons with respect to whose tax liability the subpoena is issued may, within 20 days after service of the subpoena, petition the district court in the judicial district in which that party is located for a determination concerning whether the commissioner has complied with all the requirements in clauses (1) to (5), and thus, whether the subpoena is enforceable. If no petition is made by the party served within the time prescribed, the subpoena has the effect of a court order.

Subd. 6. Request by taxpayer for subpoena. When the commissioner has the power to issue a subpoena for investigative or auditing purposes, the commissioner shall honor a reasonable request by the taxpayer to issue a subpoena on the taxpayer's behalf, if in connection with the investigation or audit.

Subd. 7. Application to court for enforcement of subpoena. Disobedience of subpoenas issued under this section shall be punished by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of the district court.

Subd. 8. Cost of production of records. The cost of producing records of a third party required by a subpoena must be paid by the taxpayer, if the taxpayer requests the subpoena to be issued, or if the taxpayer has the records available but has refused to provide them to the commissioner. In other cases when the taxpayer cannot produce records and the commissioner then initiates a subpoena for third-party records, the

commissioner shall pay the reasonable cost of producing the records. The commissioner may later assess the reasonable costs against the taxpayer if the records contribute to the determination of an assessment of tax against the taxpayer.

Subd. 9. Physical inventory. The commissioner or the commissioner's authorized agents may, as considered necessary, require a manufacturer, wholesaler, or retailer to furnish a physical inventory of all wine and distilled spirits in stock. The inventory must contain the information that the commissioner requests and must be certified by an officer of the corporation.

History: 1997 c 179 art 1 s 14

297G.15 ASSESSMENTS.

Subdivision 1. General rule. The commissioner shall make determinations, corrections, and assessments with respect to any tax under this chapter, including interest, additions to taxes, and assessable penalties. The commissioner may use statistical or other sampling techniques consistent with generally accepted auditing standards in examining returns or records and making assessments.

Subd. 2. Commissioner filed returns. If a taxpayer fails to file a required return, the commissioner, from information in the commissioner's possession or obtainable by the commissioner, may make a return for the taxpayer. The return is *prima facie* correct and valid.

Subd. 3. Order of assessment; notice and demand to taxpayer. (a) When a return has been filed and the commissioner determines that the tax disclosed by the return is different than the tax determined by the examination, the commissioner shall send an order of assessment to the taxpayer. When no return has been filed, the commissioner may make a return for the taxpayer under subdivision 2 or may send an order of assessment under this subdivision. The order must explain the basis for the assessment and must explain the taxpayer's appeal rights. An order of assessment is final when made but may be reconsidered by the commissioner under this chapter.

(b) The taxes are considered assessed when the commissioner has prepared a notice of tax assessment and mailed it to the person required to file a return to the post office address given in the return. The notice of tax assessment must be sent by mail to the post office address given in the return and the record of the mailing is presumptive evidence of the giving of notice, and such records must be preserved by the commissioner.

(c) No collection action can be taken, including the filing of liens under section 270.69, and no late payment penalty under this chapter is imposed when a return has been filed for the taxable period upon which the order is based, if the amount shown on the order is paid to the commissioner:

(1) within 60 days after the order has been mailed to the taxpayer by the commissioner; or

(2) if an administrative appeal is filed under this chapter, or a tax court appeal is filed under chapter 271, within 60 days following final determination of the appeal if the appeal is based upon a constitutional challenge to the tax, and if not, when the decision of the tax court is made.

Subd. 4. Erroneous refunds. An erroneous refund is considered an underpayment of tax on the date made. An assessment of a deficiency arising out of an erroneous refund must be made within two years from the making of the refund. If part of the refund was induced by fraud or misrepresentation of a material fact, the assessment may be made at any time.

Subd. 5. Assessment presumed valid. A return or assessment of tax made by the commissioner is *prima facie* correct and valid. The taxpayer has the burden of establishing its incorrectness or invalidity in any related action or proceeding.

Subd. 6. Aggregate refund or assessment. The commissioner, on examining returns of a taxpayer for more than one year or period, may issue one order covering the period under examination that reflects the aggregate refund or additional tax due.

Subd. 7. **Sufficiency of notice.** An order of assessment, sent postage prepaid by United States mail to the taxpayer at the taxpayer's last known address, is sufficient even if the taxpayer is deceased or is under a legal disability, or, in the case of a corporation, has terminated its existence, unless the department has been provided with a new address by a party authorized to receive notices of assessment.

History: 1997 c 179 art 1 s 15; 1Sp2001 c 5 art 7 s 57

297G.16 STATUTES OF LIMITATIONS.

Subdivision 1. **General rule.** Except as otherwise provided in this chapter, the amount of any tax due must be assessed within 3-1/2 years after a return is filed.

Subd. 2. **Date of filing.** For the purposes of this section, a return filed before the last day prescribed by law for filing is considered filed on the last day.

Subd. 3. **False or fraudulent return or claim for refund; no return.** When a person required to file a return under this chapter files a false or fraudulent return or claim for refund, or fails to file a return, the tax may be assessed, and a proceeding in court for the collection of such tax may be begun at any time.

Subd. 4. **Omission in excess of 25 percent.** If a person required to file a return omits from the return an amount properly includable in it that is in excess of 25 percent of the amount of tax reported in the return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun, at any time within 6-1/2 years after the return was filed.

Subd. 5. **Time limit for refunds.** Unless otherwise provided in this chapter, a claim for a refund of an overpayment of tax must be filed within 3-1/2 years from the date prescribed for filing the return, plus any extension of time granted for filing the return, but only if filed within the extended time, or within one year from the date of an order assessing tax or from the date of a return filed by the commissioner, upon payment in full of the tax, penalties, and interest shown on the order or return made by the commissioner, whichever period expires later.

Subd. 6. **Time limit for a destruction order refund.** Claims for refund under section 297G.12, subdivision 2, must be filed with the commissioner within one year from the date of the breakage or destruction order.

Subd. 7. **Time limit for a bad debt deduction.** Claims for refund must be filed with the commissioner within one year of the filing of the taxpayer's income tax return containing the bad debt deduction that is being claimed. Claimants under this subdivision are subject to the notice requirements of section 289A.38, subdivision 7.

Subd. 8. **Consent to extend time.** If, before the expiration of the time prescribed in this chapter for the assessment of the tax, the commissioner and the person filing the return consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time before the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Subd. 9. **Bankruptcy; suspension of time.** The running of the period during which a tax must be assessed or collection proceedings commenced is suspended during the period from the date of a filing of a petition in bankruptcy until 30 days after either notice to the commissioner that the bankruptcy proceedings have been closed or dismissed, or the automatic stay has been terminated or has expired, whichever occurs first.

The suspension of the statute of limitations under this section applies to the person the petition in bankruptcy is filed against and other persons who may also be wholly or partially liable for the tax.

History: 1997 c 179 art 1 s 16; 1Sp2001 c 5 art 7 s 58,59

297G.17 INTEREST.

Subdivision 1. **Interest rate.** When interest is required under this section, interest is computed at the rate specified in section 270.75.

Subd. 2. **Late payment.** If a tax under this chapter is not paid within the time named by law for payment, the unpaid tax bears interest from the date the tax should have been paid until the date the tax is paid.

Subd. 3. **Extensions.** When an extension of time for payment has been granted, interest must be paid from the date the payment should have been made, if no extension had been granted, until the date the tax is paid.

Subd. 4. **Additional assessments.** When a taxpayer is liable for additional taxes because of a redetermination by the commissioner, or for any other reason, the additional taxes bear interest from the time the tax should have been paid, without regard to an extension allowed, until the date the tax is paid.

Subd. 5. **Erroneous refunds or credits.** In the case of an erroneous refund or credit, interest begins to accrue from the date the refund or credit was paid unless the erroneous refund or credit results from a mistake of the department, in which case no interest or penalty is imposed, unless the deficiency assessment is not satisfied within 60 days of the order.

Subd. 6. **Interest on judgments.** Notwithstanding section 549.09, if judgment is entered in favor of the commissioner with regard to any tax under this chapter, the judgment bears interest at the rate given in section 270.75 from the date the judgment is entered until the date of payment.

Subd. 7. **Interest on penalties.** (a) A penalty imposed under section 297G.18, subdivisions 2 to 7, bears interest from the date the return or payment was required to be filed or paid, including any extensions, to the date of payment of the penalty.

(b) A penalty not included in paragraph (a) bears interest only if it is not paid within ten days from the date of the notice. In that case interest is imposed from the date of notice to the date of payment.

Subd. 8. **Interest on overpayments.** Interest must be paid on an overpayment refunded or credited to the taxpayer from the date of payment of the tax until the date the refund is paid or credited.

History: 1997 c 179 art 1 s 17

297G.18 CIVIL PENALTIES.

Subdivision 1. **General rule.** The commissioner may recover the amount of any tax due under this chapter, as well as any interest and penalty in a civil action. The collection of a tax, interest, or penalty does not bar any prosecution under this chapter.

Subd. 2. **Penalty for failure to pay tax.** If a tax imposed by this chapter is not paid within the time specified for payment, a penalty is added to the amount required to be shown as tax. The penalty is five percent of the tax not paid on or before the date specified for payment of the tax if the failure is for not more than 30 days, with an additional penalty of five percent of the amount of tax remaining unpaid during each additional 30 days or fraction of 30 days during which the failure continues, not exceeding 15 percent in the aggregate.

Subd. 3. **Penalty for failure to make and file return.** If a taxpayer fails to make and file a return within the time prescribed, including any extension, a penalty of five percent of the amount of tax not timely paid is added to the tax. If no tax is due, a penalty of \$25 is assessed for each unfiled return.

Subd. 4. [Repealed, 1999 c 243 art 16 s 39]

Subd. 5. **Penalty for intentional disregard of law or rules.** If part of an additional assessment is due to negligence or intentional disregard of the provisions of the applicable tax laws or rules of the commissioner, but without an intent to defraud, there must be added to the tax an amount equal to ten percent of the additional assessment.

Subd. 6. **Penalty for repeated failures to file or pay taxes.** If there is a pattern by a person of repeated failures to timely file returns or timely pay taxes, and written notice is given that a penalty will be imposed if such failures continue, a penalty of 25 percent of the amount of tax not timely paid as a result of each such subsequent failure is

added to the tax. The penalty can be abated under the abatement authority in section 270.07, subdivisions 1, paragraph (e), and 6.

Subd. 7. **Penalty for false or fraudulent return; evasion.** If a person files a false or fraudulent return, or attempts in any manner to evade or defeat a tax or payment of tax, there is imposed on the person a penalty equal to 50 percent of the tax due for the period to which the return related, less amounts paid by the person on the basis of the false or fraudulent return.

Subd. 8. **Revocation or suspension of license.** The commissioner may certify to the commissioner of public safety any failure to pay taxes when due as a violation of the statute relating to the sale of intoxicating liquor for possible revocation or suspension of license.

Subd. 9. **Failure to file informational returns.** A person required to file informational returns or reports that fails to do so as required by this chapter is assessed a \$25 penalty for each month the return remains unfilled.

Subd. 10. **Payment of penalties.** The penalties imposed by this section are collected and paid in the same manner as taxes.

Subd. 11. **Penalties are additional.** The civil penalties imposed by this section are in addition to the criminal penalties imposed by this chapter.

History: 1997 c 179 art 1 s 18

297G.19 CRIMINAL PENALTIES.

Subdivision 1. **Penalties for failure to file or pay.** (a) A person required to file a return, report, or other document with the commissioner who fails to do so is guilty of a misdemeanor.

(b) A person required to pay or to collect and remit a tax under this chapter, who fails to do so when required, is guilty of a misdemeanor.

Subd. 2. **Penalties for knowing failure to file or pay.** (a) A person required to file a return, report, or other document with the commissioner, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor.

(b) A person required to pay or to collect and remit a tax under this chapter, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor.

Subd. 3. **False or fraudulent returns; penalties.** (a) A person who files with the commissioner a return, report, or other document, known by the person to be fraudulent or false concerning a material matter, is guilty of a felony.

(b) A person who knowingly aids or assists in, or advises in the preparation or presentation of a return, report, or other document that is fraudulent or false concerning a material matter, whether or not the falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the return, report, or other document, is guilty of a felony.

Subd. 4. **Importation from another state.** (a) A person entering Minnesota from another state who imports or possesses more than one liter, but fewer than 25 liters of untaxed intoxicating liquor, or more than 288 ounces (nine quarts), but fewer than 6,800 ounces (225 quarts) of untaxed fermented malt beverages is guilty of a misdemeanor.

(b) A person entering Minnesota from another state who imports or possesses 25 liters or more, but fewer than 225 liters of untaxed intoxicating liquor, or 6,800 ounces (225 quarts) or more, but fewer than 34,000 ounces (1,225 quarts) of untaxed fermented malt beverages is guilty of a gross misdemeanor.

(c) A person entering Minnesota from another state who imports or possesses 225 liters or more of untaxed intoxicating liquor, or 34,000 ounces (1,225 quarts) or more of untaxed fermented malt beverages is guilty of a felony.

Subd. 5. **Importation from a foreign country.** (a) A person entering Minnesota from a foreign country who imports or possesses more than four liters, but fewer than

100 liters of untaxed intoxicating liquor, or more than 320 ounces (ten quarts), but fewer than 8,000 ounces (250 quarts) of untaxed fermented malt beverages is guilty of a misdemeanor.

(b) A person entering Minnesota from a foreign country who imports or possesses 100 liters or more, but fewer than 500 liters of untaxed intoxicating liquor, or 8,000 ounces (250 quarts) or more, but fewer than 40,000 ounces (1,250 quarts) of untaxed fermented malt beverages is guilty of a gross misdemeanor.

(c) A person entering Minnesota from a foreign country who imports or possesses 500 liters or more of untaxed intoxicating liquor, or 40,000 ounces (1,250 quarts) or more of untaxed fermented malt beverages is guilty of a felony.

Subd. 6. **Penalties are additional.** Criminal penalties imposed by this section are in addition to any civil penalties imposed by this chapter.

Subd. 7. **Other penalties.** Any violation of this chapter unless otherwise specified is a misdemeanor.

Subd. 8. **Statute of limitations.** Notwithstanding section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and filed, or a complaint filed, upon a criminal offense named in this section, in the proper court within six years after the offense is committed.

History: 1997 c 179 art 1 s 19

297G.20 CONTRABAND.

Subdivision 1. **Contraband defined.** The following are declared to be contraband and therefore subject to civil and criminal penalties and seizure under this chapter:

(1) All distilled spirits, wine, and fermented malt beverages possessed or held with intent to sell without payment of an excise tax.

(2) All distilled spirits, wine, and fermented malt beverages sold without payment of an excise tax.

(3) All distilled spirits, wine, and fermented malt beverages transported without payment of an excise tax.

(4) Devices including, but not limited to, motor vehicles, trailers, snowmobiles, airplanes, and boats used with the knowledge of the owner, or of a person operating with the consent of the owner, for the storage or transportation of distilled spirits, wine, and fermented malt beverages which are contraband under this subdivision.

Subd. 2. **Exception.** When distilled spirits, wine, and fermented malt beverages are being transported in the course of interstate commerce, or are in movement from either a public warehouse to a wholesaler upon orders from a manufacturer or wholesaler, or from one wholesaler to another, the distilled spirits, wine, and fermented malt beverages are not contraband, notwithstanding the provisions of subdivision 1.

Subd. 3. **Seizure.** Distilled spirits, wine, fermented malt beverages, or other property made contraband by subdivision 1 may be seized by the commissioner of revenue or public safety and their authorized agents or by any sheriff or other police officer, with or without process, and are subject to forfeiture as provided in subdivision 4.

Subd. 4. **Inventory; judicial determination; appeal; disposition of seized property.**

(a) Within ten days after the seizure of alleged contraband, the person making the seizure shall serve by certified mail an inventory of the property seized on the person from whom the property was seized, if known, and on any person known or believed to have any right, title, interest, or lien in the property, at the last known address, and file a copy with both the commissioners of revenue and public safety. The notice must include an explanation of the right to demand a judicial forfeiture determination.

(b) Within 60 days after the date of service of the inventory, which is the date of mailing, the person from whom the property was seized or any person claiming an interest in the property may file a demand for judicial determination of whether the property was lawfully subject to seizure and forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in

which the seizure occurred, together with proof of service of a copy of the complaint on the commissioner of revenue or public safety, and the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. If the value of the seized property or vehicle is \$7,500 or less, the claimant may file an action in conciliation court for recovery of the property. If the value of the seized property is less than \$500, the claimant does not have to pay the conciliation court filing fee.

(c) The complaint must be captioned in the name of the claimant as plaintiff and the seized property as defendant, and must state with specificity the grounds on which the claimant alleges the property was improperly seized and the plaintiff's interest in the property seized. No responsive pleading is required of the commissioner of revenue or public safety and no court fees may be charged for either commissioner's appearance in the matter. The proceedings are governed by the Rules of Civil Procedure. Notwithstanding any law to the contrary, an action for the return of property seized under this section may not be maintained by or on behalf of any person who has been served with an inventory unless the person has complied with this subdivision. The court shall hear the action without a jury and determine the issues of fact and law involved.

(d) If a judgment of forfeiture is entered, the seizing authority may, unless the judgment is stayed pending an appeal, either:

- (1) cause the forfeited property, other than a vehicle, to be destroyed; or
- (2) cause it to be sold at a public auction as provided by law.

The person making a sale, after deducting the expense of keeping the property, the fee for seizure, and the costs of the sale, shall pay all liens according to their priority, which are established as being bona fide and as existing without the lienor having any notice or knowledge that the property was being used or was intended to be used for or in connection with the violation. The balance of the proceeds must be paid 75 percent to the seizing authority for deposit as a supplement to its operating fund or similar fund for official use, and 25 percent to the county attorney or other prosecuting agency that handled the court proceeding, if there is one, for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes. If there is no prosecuting authority involved in the forfeiture, the 25 percent of the proceeds otherwise designated for the prosecuting authority must be deposited into the general fund.

(e) If no demand is made, the property seized is considered forfeited to the seizing authority by operation of law and may be disposed of by the seizing authority as provided for a judgment of forfeiture.

Subd. 5. [Repealed, 1Sp2001 c 5 art 18 s 11]

History: 1997 c 179 art 1 s 20; 1Sp2001 c 5 art 18 s 9,10

297G.21 ADMINISTRATIVE REVIEW.

Subdivision 1. **Taxpayer right to reconsideration.** A taxpayer may obtain reconsideration by the commissioner of an order assessing any tax imposed by this chapter, a denial of a request for abatement of penalty, or a denial of a claim for refund by filing an administrative appeal under subdivision 3. A taxpayer cannot obtain reconsideration under this section if the action taken by the commissioner is the outcome of an administrative appeal.

Subd. 2. **Notice date.** For purposes of this section, the term "notice date" means the date of the order adjusting the tax or order denying a request for abatement, or, in the case of a denied refund, the date of the notice of denial.

Subd. 3. **Time and content for administrative appeal.** Within 60 days after the notice date, the taxpayer must file a written appeal with the commissioner. The appeal need not be in any particular form but must contain the following information:

- (1) the name and address of the taxpayer;
- (2) if a corporation, the state of incorporation of the taxpayer, and the principal place of business of the corporation;

- (3) the Minnesota identification number or social security number of the taxpayer;
- (4) the type of tax involved;
- (5) the date;
- (6) the tax years or periods involved and the amount of tax involved for each year or period;
- (7) the findings in the notice that the taxpayer disputes;
- (8) a summary statement that the taxpayer relies on for each exception; and
- (9) the taxpayer's signature or signature of the taxpayer's duly authorized agent.

Subd. 4. **Extensions.** When requested in writing and within the time allowed for filing an administrative appeal, the commissioner may extend the time for filing an appeal for a period of not more than 30 days from the expiration of the 60 days from the notice date.

Subd. 5. **Determination of appeal.** On the basis of applicable law and available information, the commissioner shall determine the validity, if any, in whole or part of the appeal and notify the taxpayer of the decision. This notice must be in writing and contain the basis for the determination.

Subd. 6. **Agreement determining tax liability.** When it appears to be in the best interests of the state, the commissioner may settle any taxes, penalties, or interest that the commissioner has under consideration by virtue of an appeal filed under this section. An agreement must be in writing and signed by the commissioner and the taxpayer, or the taxpayer's representative authorized by the taxpayer to enter into an agreement. The agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon.

Subd. 7. **Appeal of an administrative determination.** Following the determination of an appeal and notwithstanding any period of limitations for making assessments or other determinations to the contrary, the commissioner shall issue an order reflecting that disposition. If the statute of limitations for making assessments or other determinations would have expired before the issuance of this order, except for this section, the order is limited to issues or matters contained in the appealed determination. The order is appealable to the Minnesota tax court under section 271.06.

Subd. 8. **Appeal where no determination.** If the commissioner does not make a determination within six months of the filing of an administrative appeal, the taxpayer may elect to appeal to tax court.

Subd. 9. **Inapplicability of Administrative Procedure Act.** An appeal under this section is not a contested case governed by chapter 14.

History: 1997 c 179 art 1 s 21; 1998 c 300 art 3 s 13,14

297G.22 JUDICIAL REVIEW.

In lieu of an administrative appeal under this chapter, a person aggrieved by an order of the commissioner fixing a tax, penalty, or interest under this chapter may, within 60 days from the date of the notice of the order, appeal to the tax court in the manner provided under section 271.06.

History: 1997 c 179 art 1 s 22