

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" means:

(1) 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;

(2) any beverage that would be classified as a flavored malt beverage except that the alcohol contribution from flavors and other nonbeverage materials exceeds 49 percent of the alcohol content of the product; or

(3) any beverage that would be classified as a flavored malt beverage except that the beverage contains more than six percent alcohol by volume, and more than 1.5 percent of the volume of the finished product consists of alcohol derived from flavors and other nonbeverage ingredients that contain alcohol.

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. 8a. **Flavored malt beverage.** (a) "Flavored malt beverage" means a fermented malt beverage that:

(1) contains six percent or less alcohol by volume and derives at least 51 percent of its alcohol content by volume from the fermentation of grain-derived carbohydrates, as long as not more than 49 percent of the beverage's overall alcohol content is obtained from flavors and other added nonbeverage ingredients containing alcohol; or

(2) contains more than six percent alcohol by volume that derives not more than 1.5 percent of its overall alcohol content by volume from flavors and other added nonbeverage ingredients containing alcohol.

(b) Flavored malt beverage does not include cider or an alcoholic beverage obtained primarily by fermentation of rice, such as sake.

Subd. 9. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code as defined in section 289A.02, subdivision 7.

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.

Subd. 21. **Low-alcohol dairy cocktail.** "Low-alcohol dairy cocktail" means a premixed cocktail, or any other product except liqueur-filled candy, that:

- (1) consists primarily of milk products;
- (2) contains distilled spirits;
- (3) is drinkable as a beverage or is promoted as an alcoholic product; and
- (4) contains less than 3.2 percent alcohol by volume.

History: 1997 c 179 art 1 s 1; 1998 c 389 art 8 s 22; 1Sp2003 c 21 art 9 s 11; 2006 c 259 art 7 s 6,7; 2008 c 366 art 11 s 24

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 chapter 270C, and the provisions of that chapter 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; 2005 c 151 art 2 s 17

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 |
| (h) Low alcohol dairy cocktails | \$.08 per gallon | \$.02 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; 1Sp2003 c 21 art 9 s 12

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 270C.40 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.

Subd. 9. **Accelerated tax payment; penalty.** A person liable for tax under this chapter having a liability of \$120,000 or more during a fiscal year ending June 30, shall remit the June liability for the next year in the following manner:

(a) Two business days before June 30 of the year, the taxpayer shall remit the actual May liability and 90 percent of the estimated June liability to the commissioner and file the return in the form and manner prescribed by the commissioner.

(b) On or before August 18 of the year, the taxpayer shall submit a return showing the actual June liability and pay any additional amount of tax not remitted in June. A penalty is imposed equal to ten percent of the amount of June liability required to be paid in June less the amount remitted in June. However, the penalty is not imposed if the amount remitted in June equals the lesser of:

- (1) 90 percent of the actual June liability; or
- (2) 90 percent of the preceding May liability.

Subd. 10. **Quarterly and annual payments and returns.** (a) If a manufacturer, wholesaler, brewer, or importer has an average liquor tax liability equal to or less than \$500 per month in any quarter of a calendar year, and has substantially complied with the state tax laws during

the preceding four calendar quarters, the manufacturer, wholesaler, brewer, or importer may request authorization to file and pay the taxes quarterly in subsequent calendar quarters. The authorization remains in effect during the period in which the manufacturer's, wholesaler's, brewer's, or importer's quarterly returns reflect liquor tax liabilities of less than \$1,500 and there is continued compliance with state tax laws.

(b) If a manufacturer, wholesaler, brewer, or importer has an average liquor tax liability equal to or less than \$100 per month during a calendar year, and has substantially complied with the state tax laws during that period, the manufacturer, wholesaler, brewer, or importer may request authorization to file and pay the taxes annually in subsequent years. The authorization remains in effect during the period in which the manufacturer's, wholesaler's, brewer's, or importer's annual returns reflect liquor tax liabilities of less than \$1,200 and there is continued compliance with state tax laws.

(c) The commissioner may also grant quarterly or annual filing and payment authorizations to manufacturers, wholesalers, brewers, or importers if the commissioner concludes that the manufacturer's, wholesaler's, brewer's, or importer's future tax liabilities will be less than the monthly totals identified in paragraphs (a) and (b). An authorization granted under this paragraph is subject to the same conditions as an authorization granted under paragraphs (a) and (b).

(d) The annual tax return and payments must be filed and paid on or before the 18th day of January following the calendar year. The quarterly returns and payments must be filed and paid on or before April 18 for the quarter ending March 31, on or before July 18 for the quarter ending June 30, on or before October 18 for the quarter ending September 30, and on or before January 18 for the quarter ending December 31.

History: 1997 c 179 art 1 s 9; 1Sp2001 c 5 art 17 s 18; 1Sp2003 c 21 art 9 s 13; 2005 c 151 art 2 s 17; art 8 s 15; 2006 c 259 art 13 s 8; 2008 c 154 art 6 s 4; 2008 c 366 art 8 s 4

NOTE: The amendments to subdivision 9 by Laws 2008, chapter 154, article 6, section 4, and Laws 2008, chapter 366, article 8, section 4, are effective beginning with June 2009 tax liabilities. Laws 2008, chapter 154, article 6, section 4, and Laws 2008, chapter 366, article 8, section 4, the effective dates.

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 PHYSICAL INVENTORY.

Subdivision 1. [Repealed, 2005 c 151 art 1 s 117]

Subd. 2. [Repealed, 2005 c 151 art 1 s 117]

Subd. 3. [Repealed, 2005 c 151 art 1 s 117]

Subd. 4. [Repealed, 2005 c 151 art 1 s 117]

Subd. 5. [Repealed, 2005 c 151 art 1 s 117]

Subd. 6. [Repealed, 2005 c 151 art 1 s 117]

Subd. 7. [Repealed, 2005 c 151 art 1 s 117]

Subd. 8. [Repealed, 2005 c 151 art 1 s 117]

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 [Repealed, 2005 c 151 art 1 s 117]

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 270C.40.

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 270C.40 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; 2005 c 151 art 2 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 270C.34.

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 unfiled.

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; 2005 c 151 art 2 s 17

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 [Repealed, 2005 c 151 art 1 s 117]

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*