

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.13.402, 42.13.406,) PROPOSED AMENDMENT
42.13.701, and 42.13.702 pertaining)
to beer and wine tax reporting)
changes to implement HB 124 and)
SB 20 (2023))

TO: All Concerned Persons

1. On March 1, 2024, at 10:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on February 16, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.13.402 TABLE WINE AND HARD CIDER DISTRIBUTOR'S MONTHLY REPORTS AND TAX RETURN (1) Each winery and table wine distributor shall pay any tax due and file a ~~table wine distributor's monthly~~ quarterly tax return on Form WIT, pursuant to 16-1-411 and 16-3-411, MCA. The form must be filed regardless of whether the winery or table wine distributor sold any table wine that month or hard cider during the quarter.

(2) Each winery and table wine distributor must file the return and pay tax on or before the 15th day of ~~each~~ the month following the end of the quarter for table wine and hard cider sold in the previous ~~month~~ quarter.

(3) Failure to file the return or pay the table wine tax and hard cider tax is sufficient cause for the assessment of penalties and interest in accordance with 15-1-216 and 16-1-411, MCA, and other penalties provided in 16-4-406, MCA.

(4) ~~Each table wine distributor shall monthly file Form WIT-3 to report the total amount of table wine sold to retailers, as required by 16-3-404, MCA. Sections (1) through (3) do not apply to a winery or wine importer that sells its products solely to table wine distributors.~~

(5) For purposes of this tax, a tax year begins on July 1, and a "quarter" means a tax reporting period which begins July 1, October 1, January 1, and April 1 of each

tax year.

AUTH: 16-1-303, MCA

IMP: 15-1-216, 16-1-411, 16-3-404, 16-3-411, 16-4-406, MCA

REASONABLE NECESSITY: House Bill 124 (2023) (HB 124) was enacted by the 68th Montana Legislature and revises the required filing frequency of beer, wine, and hard cider taxes from monthly to quarterly. The department proposes to amend ARM 42.13.402 to align with HB 124's amendments to 16-1-406 and 16-1-411, MCA.

The department also proposes to strike content in (4) as table wine distributors are not statutorily required to report sales to retailers. Instead, the department adds in (4) that a winery and wine importer that solely sells its products to a table wine distributor is not subject to (1) through (3) because they have no tax liability to the department.

The department proposes (5) to clarify the tax year and define the beginning of a quarter for tax reporting and collection.

~~42.13.406 TABLE WINE, HARD CIDER, AND SACRAMENTAL WINE REPORTING REQUIREMENTS (1) All wineries and table wine distributors that sell table wine, hard cider, or sacramental wine in Montana must electronically file the tax returns and reports listed in (2) through (5), on forms provided by the department, and pay any tax due in accordance with the filing frequencies prescribed in 16-1-411, MCA.~~

~~(2) The following entities shall file a wine tax return for table wine sold in Montana and a hard cider tax return for hard cider sold in Montana:~~

~~(a) registered or licensed wineries with a direct shipment endorsement for table wine, hard cider, or both sold directly to consumers;~~

~~(b) licensed wineries for table wine, hard cider, or both sold to licensed retailers;~~

~~(c) licensed wineries, located in Montana, for table wine, hard cider, or both sold to consumers through the winery's sample room; and~~

~~(d) table wine distributors for table wine, hard cider, or both sold to licensed retailers.~~

~~(3) (1) The following licensed entities shall pay any tax due and file a wine tax return on Form WIT for sacramental wine sold in Montana:~~

~~(a) through (c) remain the same.~~

~~(4) Licensed out-of-state wineries that sell table wine, hard cider, or sacramental wine directly to licensed retailers shall report the amount of table wine, hard cider, and sacramental wine sold to each licensed retailer.~~

~~(5) Licensed or registered wineries that sell table wine, hard cider, or sacramental wine to a table wine distributor shall report the amount of table wine, hard cider, and sacramental wine sold to each table wine distributor.~~

~~(6) Licensed retailers that purchase table wine, hard cider, or sacramental wine directly from a licensed out-of-state winery shall report the amount of table wine, hard cider, and sacramental wine purchased from each winery on or before the 15th day of each month following the purchase of the table wine, hard cider, and~~

sacramental wine.

(2) Failure to file the required return or pay the tax is sufficient cause for the assessment of penalties and interest in accordance with 15-1-216 and 16-1-411, MCA, and other penalties provided in 16-4-406, MCA.

AUTH: 16-1-303, MCA

IMP: 16-1-411, 16-3-404, 16-3-411, 16-4-107, 16-4-313, 16-4-1101, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: Senate Bill 20 (2023) (SB 20) was enacted by the 68th Montana Legislature and generally revises alcoholic beverage taxation laws. The department proposes to amend ARM 42.13.406 to align with SB 20's amendments to statute.

The department proposes to strike (1) and (2) because statute now clarifies who is responsible for paying the tax on table wine and hard cider making the sections obsolete. Sections (4), (5), and (6) are proposed for removal because the information is unnecessarily redundant as (4) is referenced in 16-1-411, MCA, (5) in 16-3-411(2)(c), MCA, and (6) in 16-3-404(2), MCA.

The department proposes the addition of new (2) as notice for licensees of amended and existing law for failure to file required reports and pay the required taxes. New (2) cross-references the relevant statutory authorities which are located in statutes across Title 15 and Title 16, MCA.

42.13.701 PRODUCTION INCREMENTS USED IN THE CALCULATION OF TAXES ON BEER (1) Section 16-1-406, MCA, requires each barrel of beer sold in Montana to be taxed. This tax is based upon the total number of barrels of beer produced by a brewer in a year. For purposes of this tax, "year" means the department's fiscal year which begins on July 1 of each calendar year and ends on June 30 of the following calendar year. "Annual" or "annually" are synonymous with the department's "year." For purposes of this tax, a tax year begins on July 1, and a "quarter" means a tax reporting period beginning July 1, October 1, January 1, and April 1 of each tax year.

(2) remains the same.

(a) For the purposes of production reporting and calculating taxes owed, a brewer who has produced 10,000 barrels of beer or less in the preceding year will begin the next year at the \$1.30 per barrel tax rate. ~~The month~~ quarter after the brewer exceeds a production increment, the per barrel tax rate will increase to the next production increment amount. For example, if the 5,001st barrel is produced ~~on May 20 during the first quarter~~, the tax rate will be \$1.30 for all of the ~~month of May first quarter~~. The per barrel tax rate will increase to \$2.30 beginning with the ~~month of June second quarter~~ and will continue at that rate for the remainder of the year or until the ~~month~~ quarter after the next production increment is exceeded.

(b) remains the same.

(c) For the purposes of production reporting and calculating taxes owed, a new brewer will begin the year at the \$1.30 per barrel tax rate. The ~~month~~ quarter after the new brewer exceeds a production increment, the per barrel tax rate will increase to the next production increment amount. If a new brewer produces more

than 10,000 barrels in the first ~~month~~ quarter of the year, all its production will be taxed at the \$4.30 per barrel tax rate for the year.

(3) A brewer must notify both the department and its wholesalers, in writing, by the end of the ~~month~~ quarter when a production increment is exceeded, resulting in the brewer moving to the next production increment.

AUTH: 16-1-303, MCA
IMP: 16-1-406, 16-1-409, MCA

REASONABLE NECESSITY: As described in the department's amendments to ARM 42.13.402, HB 124 revises the required filing frequency of beer, wine, and hard cider taxes from monthly to quarterly. Similar to ARM 42.13.402, the department proposes to amend ARM 42.13.701 to align with HB 124's amendments to 16-1-406 and 16-1-411, MCA.

The department proposes to amend (1) to clarify the tax year and define the beginning of a quarter for tax reporting and collection. Sections (2) and (3) are amended to change applicable references from "month" to "quarter."

~~42.13.702 BEER REPORTING REQUIREMENTS TAX RETURNS (1) On or before the 15th of each month, a brewery that sells beer directly to a retailer or consumer in Montana shall pay any tax due and file Form BET.~~

~~(2) On or before the 15th of each month, each licensed brewer and beer importer located outside of Montana shall file Form BSM, reporting the amount of beer shipped directly into the state to each Montana beer wholesaler.~~

~~(3) On or before the 15th of each month, a retailer shall file Form BET-2, reporting the amount of beer purchased from out-of-state breweries.~~

(1) A brewery or beer wholesaler shall pay any beer taxes due and file a quarterly tax return with the department on Form BET, pursuant to 16-1-406, MCA. The form must be filed regardless of whether the brewery or beer wholesaler sold any beer during the quarter.

(2) A brewery or beer wholesaler must pay the beer tax and file the required return on or before the 15th day of the month following the end of the quarter for beer sold during the previous quarter.

(3) Failure to file the required return or pay the beer tax is sufficient cause for the assessment of penalties and interest in accordance with 15-1-216 and 16-1-406, MCA, and other penalties provided in 16-4-406, MCA.

(4) Sections (1) through (3) do not apply to a brewery or beer importer that sells its products solely to a beer wholesaler.

(5) For purposes of this tax, a tax year begins on July 1, and a "quarter" means a tax reporting period which begins July 1, October 1, January 1, and April 1 of each tax year.

AUTH: 16-1-303, MCA
IMP: 16-1-406, 16-3-211, MCA

REASONABLE NECESSITY: As described in the department's amendments to ARM 42.13.402 and 42.13.701, HB 124 revises the required filing frequency of

beer, wine, and hard cider taxes from monthly to quarterly. Similar to the other rules, the department proposes to amend ARM 42.13.702 to align with HB 124's amendments to 16-1-406 and 16-1-411, MCA, which begins with the removal of current (1) and (3) because they are obsolete under the revised law. Section (2) is provided in 16-3-211(2), MCA, which makes it unnecessarily redundant to the statute.

The department's proposal of new (1) is necessary to cross-reference the form a brewery or beer wholesaler must complete and file to report beer taxes. Proposed (2) establishes when a tax return must be filed. Proposed (3) is necessary to inform taxpayers of the penalties, interests, and violations that may occur for failing to comply with the requirements of the law.

The department proposes to add (4) that a brewery and beer importer that only sells its products to a beer wholesaler is not subject to (1) through (3) because they have no tax liability to the department.

The department proposes (5) to clarify the tax year and define the beginning of a quarter for tax reporting and collection.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., March 11, 2024.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The respective primary bill sponsors for HB 124 and SB 20, Representative Bergstrom and Senator Fitzpatrick, were contacted by email on November 14, 2023, and on January 29, 2024.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State January 30, 2024.