CHAPTER 244
LIQUOR TAX LAW

REPEALED. L Sp 1984 1st, c 1, §5.

This is an unofficial compilation of the Hawaii Revised Statutes.

Cross References

For present provisions, see chapter 244D.

CHAPTER 244D
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Section

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Cross Reference

Tax Information Release No. 97-4, "Application of the Business Entity Classification Rules Under the 'Check-the-box' Regulations to the Hawaii Income Tax and Other Taxes"

18-244D-1 **§244D-1 Definitions.** Wherever used in this chapter, unless the context otherwise requires:

"Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

"Beer" means any alcoholic beverage obtained by the fermentation or any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine, or cooler beverage.

"Cooler beverage" means either (1) a wine cooler containing wine and more than fifteen per cent added natural or artificial blending material, such as fruit juices, flavors, flavorings, or adjuncts, water (plain, carbonated, or sparkling), colorings, or preservatives, and which contains less than seven per cent of alcohol by volume; or (2) a malt beverage

cooler containing beer and added natural or artificial blending material such as fruit juices, flavors, flavorings, colorings, or preservatives, and which contains less than seven per cent of alcohol by volume.

"Dealer" means the holder of a manufacturer's license, a wholesaler's license, or a brewpub's license under the liquor law.

"Distilled spirits" means an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof, but does not include beer, draft beer, cooler beverage, or wine.

"Draft beer" means beer in an individual container of seven gallons or more.

"Gallon" or "wine gallon" means that liquid measure containing one hundred twenty-eight fluid ounces (3.7854 liters).

"Licensed premises" shall have the same meaning as the term is used in chapter 281.

"Liquor" has the same meaning as set forth in section 281-1 and includes alcohol, and the liquor categories: beer, draft beer, cooler beverage, distilled spirits, and wine.

"Liquor commission" or "commission" means the liquor commission of each county.

"Liquor law" means chapter 281.

"Permittee" means the holder of a permit provided for in section 244D-2.

"Person" means an individual, partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, trustee, or other fiduciary, or other entity.

"Sale" means any transfer of title or possession, or both, exchange or barter, in any manner or by any means whatsoever, for a consideration.

"Sparkling wine" means champagne and any other effervescent wine charged with more than 0.392 grams of carbon dioxide per 100 milliliters of wine, whether artificially or as a result of secondary fermentation of wine within the container.

"Still wine" means any nonsparkling wine and shall include those wines containing not more than 0.392 grams of carbon dioxide per 100 milliliters of wine.

"Unit price" for a liquor category taxed under this chapter shall be equal to the total dollar volume of taxable sales, exclusive of all federal and state excise taxes, reported for such liquor category, divided by the total gallons of taxable sales reported for such liquor category over the same period.

"Use" means any use, whether such use is of such nature as to cause the property to be appreciably consumed or not, or the keeping of such property for such use or for sale, and shall include the exercise of any right or power over tangible personal property incident to the ownership of that property.

"Wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which contains not more than twenty-four per cent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine, but does not include cooler beverage. [L Sp 1984 1st, c 1, pt of §2; am L 1986, c 344, §2; am L 1989, c 149, §1; am L 1994, c 174, §1]

[§244D-2] Permit. (a) It shall be unlawful for any dealer to sell liquor unless a permit has been issued to the dealer as hereinafter prescribed, and such permit is in full force and effect.

(b) The liquor commission shall certify to the department of taxation from time to time and within forty-eight hours after such license is issued the name of every dealer, together with the dealer's place of business and the period covered by the dealer's license. The department thereupon shall issue its permit to such person for the period covered by the person's license upon the payment of a permit fee of $2.50. The permit shall be issued by the department as of the date when the liquor commission issued the license.

(c) Any permit issued under this chapter shall not be assignable; it shall be conspicuously displayed on the licensed premises of the permittee; it shall expire on June 30 next succeeding the date upon which it is issued, unless sooner suspended, surrendered, or revoked for cause by the department; and it shall be renewed annually before July 1, upon fulfillment of all requirements as in the case of an original permit and the payment of a renewal fee of $2.50. Whenever a permit is defaced, destroyed, or lost, or the licensed premises are relocated, the department may issue a duplicate permit to the permittee upon the payment of a fee of 50 cents.

(d) The department may suspend, or, after hearing, revoke, any permit issued under this chapter whenever it finds that the permittee has failed to comply with this chapter, or any rule or regulation of the department prescribed, adopted, and promulgated under this chapter. Upon suspending or revoking any permit the department shall request the permittee to surrender to it immediately the permit, or any duplicate thereof issued to the permittee, and the permittee shall surrender the same promptly to the department as requested. Whenever the department suspends a permit, it shall notify the permittee immediately and afford the permittee a hearing, if desired, and if a hearing has not already been afforded. After the hearing the department shall either rescind its order of suspension, or good cause appearing therefor, shall continue the suspension or revoke the permit. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985]

§244D-3 Cooperation between department and liquor commission. The department of taxation and the liquor commission, if the commission exercises its authority under this chapter, shall cooperate in the enforcement of this chapter.

The department shall notify the proper liquor commission of the name and address of every permittee whose permit has been revoked, and any license issued to the permittee under the liquor law thereupon shall be deemed forfeited.

The department may notify the proper liquor commission of the name and address of every person who has failed to file any return required, or to pay any tax prescribed, or to secure a permit, or to perform any other duty or act imposed under this chapter, and such liquor commission shall thereupon suspend any license which may have been issued to any such person under the liquor law until such time as such person complies with this chapter.

The liquor commission, if the commission exercises its authority under this chapter, shall provide to the department the results of any examination the commission has undertaken pursuant to section 244D-10 and shall, upon request, furnish to the department any information in its possession relative to any person having a license issued by it, and its records shall be open to examination of the department. [L Sp 1984 1st, c 1, pt of §2; am L 1986, c 344, §3]

18-244D-4 **§244D-4 Tax; limitations.** (a) Every person who sells or uses any liquor in the State not taxable under this chapter, in respect of the transaction by which the person or the person's vendor acquired the liquor, shall pay a gallonage tax which is hereby imposed at the following rates for the various liquor categories defined in section 244D-1:

For the period July 1, 1997, to June 30, 1998, the tax rate shall be:

(1) $5.92 per wine gallon on distilled spirits;
(2) $2.09 per wine gallon on sparkling wine;
(3) $1.36 per wine gallon on still wine;
(4) $0.84 per wine gallon on cooler beverages;
(5) $0.92 per wine gallon on beer other than draft beer;
(6) $0.53 per wine gallon on draft beer;

On July 1, 1998, and thereafter, the tax rate shall be:

(1) $5.98 per wine gallon on distilled spirits;
(2) $2.12 per wine gallon on sparkling wine;
(3) $1.38 per wine gallon on still wine;
(4) $0.85 per wine gallon on cooler beverages;
(5) $0.93 per wine gallon on beer other than draft beer;
(6) $0.54 per wine gallon on draft beer;

and at a proportionate rate for any other quantity so sold or used.

(b) The tax levied pursuant to subsection (a) shall be paid only once upon the same liquor; provided further that the tax shall not apply to:

(1) Liquor held for sale by a permittee but not yet sold;
(2) Liquor sold by one permittee to another permittee;
(3) Liquor which under the Constitution and laws of the United States cannot be legally subjected to the tax imposed by this chapter so long as and to the extent to which the State is without power to impose the tax;
(4) Liquor sold for sacramental purposes or the use of liquor for sacramental purposes, or any liquor imported pursuant to section 281-33;
(5) Alcohol sold pursuant to section 281-37 to a person holding a purchase permit or prescription therefor, or any sale or use of alcohol, so purchased, for other than beverage purposes. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985; am L 1986, c 344, §4; am L 1988, c 335, §1; am L 1989, c 149, §1; am L 1994, c 89, §1; am L 1997, c 20, §3]

Case Notes

Prior law.
Exemption for okolehao and pineapple wine held violative of commerce clause of U.S. Constitution. 468 U.S. 263.

[§244D-4.3] Exemption for sales of liquor shipped out of the State. (a) There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the value or gross proceeds arising from the manufacture, production, or sale of liquor shipped by the manufacturer, producer, or seller to a point outside the State where the liquor is resold or otherwise consumed or used outside the State.

(b) For the purposes of this section, the manufacturer, producer, or seller shall take from the purchaser, a certificate, in such form as the department shall prescribe, certifying that the liquor purchased is to be resold or otherwise consumed or used outside the State. Any purchaser who shall furnish such a certificate shall be obligated to pay to the seller, upon demand, if the liquor purchased is not resold or otherwise consumed or used outside the State, the amount of the additional tax which by reason thereof is imposed upon the seller. [L 1997, c 20, §2]

18-244D-4.5 **§244D-4.5 REPEALED.** L 1994, c 89, §2.

§244D-5 REPEALED. L 1986, c 344, §5; L 1989, c 149, §1.

§244D-6 Return, form, contents. Every taxpayer shall, on or before the twentieth day of each month, file with the department of taxation in the taxation district in which the taxpayer's business premises are located, or with the department in Honolulu, a return showing all sales of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) made by the taxpayer during the preceding month, showing separately the amount of the nontaxable sales, and the amount of the taxable sales, and the tax payable thereon. The return shall also show the amount of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) used during the preceding month which is subject to tax, and the tax payable thereon. The form of return shall be prescribed by the department and shall contain such information as it may deem necessary for the proper administration of this chapter. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985; am L 1986, c 344, §6; am L 1989, c 149, §1; am L 2010, c 22, §5]

Note

The 2010 amendment does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before July 1, 2010. L 2010, c 22, §12.

[§244D-7] Payment of tax; penalties. At the time of the filing of the return required under section 244D-6 and within the time prescribed therefor, each taxpayer shall pay to the department of taxation the tax imposed by this chapter, required to be shown by the return.

Penalties and interest shall be added to and become a part of the tax, when and as provided by section 231-39. [L Sp 1984 1st, c 1, pt of §2]

[§244D-8] Determination of tax, additional assessments, credit, and refunds. (a) As soon as practicable after each return has been filed, the department of taxation shall cause it to be examined and shall compute and determine the amount of the tax payable thereon.

(b) If it should appear upon such examination or thereafter within five years after the filing of the return, or at any time if no return has been filed, as a result of such examination or as a result of any examination of the records of the taxpayer or of any other inquiry or investigation, that the correct amount of the tax is greater than that shown on the return, or that any tax imposed by the chapter has not been paid, an assessment of such tax may be made in the manner provided in section 235-108(b). The amount of the tax for the period covered by the assessment shall not be reduced below the amount determined by an assessment so made, except upon appeal or in a proceeding brought pursuant to section 40-35.

(c) If the taxpayer has paid or returned with respect to any month more than the amount determined to be the correct amount of tax for such month, the amount of the tax so returned and any assessment of tax made pursuant to the return may be reduced, and any overpayment of tax may be credited upon the tax imposed by this chapter, or at the election of the taxpayer, the taxpayer not being delinquent in the payment of any taxes owing to the State, may be refunded in the manner provided in section 231-23(c); provided that no reduction of tax may be made when forbidden by subsection (b) or more than five years after the filing of the return. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985]

Revision Note

In subsection (c),"231-23(c)" substituted for "231-23(d)".

§244D-9 Records to be kept. (a) Every dealer shall keep a record of all sales of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) made by the dealer, in such form as the department of taxation may prescribe. Every person holding a license under the liquor law, other than a manufacturer's or wholesaler's license, shall keep a record of all purchases by the person of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a), in such form as the department may prescribe. All such records shall be offered for inspection and examination at any time upon demand by the department or commission and shall be preserved for a period of five years, except that the department may in writing consent to their destruction within such period or may require that they be kept longer.

The department may by rule require the dealer to keep such other records as it may deem necessary for the proper enforcement of this chapter.

(b) If any dealer or any other taxpayer fails to keep records from which a proper determination of the tax due under this chapter may be made, the department may fix the amount of tax for any period from the best information obtainable by it, and assess the tax as hereinbefore provided. [L Sp 1984 1st, c 1, pt of §2; am L 1986, c 344, §7; am L 1989, c 149, §1]

§244D-10 Inspection. The director of taxation, the liquor commission, or the duly authorized agent of either the director or commission, may examine all records required to be kept under this chapter, and books, papers, and records of any person engaged in the sale of liquor to verify the accuracy of the payment of the tax imposed by this chapter and other compliance with this chapter and regulations adopted pursuant thereto. Every person in possession of such books, papers, and records and the person's agents and employees shall give the director, the commission, or the duly authorized agent of either of them, the means, facilities, and opportunities for such examination.

The authority granted to the liquor commission under this section shall not conflict with section 231-18 and shall not extend to the inspection of any documents not directly related to this chapter. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985; am L 1986, c 344, §8]

[§244D-11] Tax in addition to other taxes. The tax imposed by this chapter shall be in addition to any other tax imposed upon the business of selling liquor or upon any of the transactions, acts, or activities taxed by this chapter. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985]

§244D-12 Appeals. Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114. The hearing and disposition of the appeal, including the distribution of costs shall be as provided in chapter 232. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985; am L 2000, c 199, §7; am L 2004, c 123, §7]

Note

The 2000 amendment does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before June 8, 2000. L 2000, c 199, §§11 and 13.

The 2004 amendment applies to tax appeals filed on or after July 1, 2004. L 2004, c 123, §14.

Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

§244D-13 Other provisions applicable. All of the provisions of chapters 235 and 237 not inconsistent with this chapter and which may appropriately be applied to the taxes, persons, circumstances, and situations involved in this chapter, including (without prejudice to the generality of the foregoing) provisions as to penalties and interest, and provisions granting administrative powers to the director of taxation, and provisions for the assessment, levy, and collection of taxes, shall be applicable to the taxes imposed by this chapter, and to the assessment, levy, and collection thereof, except that returns, return information, or reports under this chapter and relating only to this chapter may be made known to the liquor commission by the department of taxation, if not in conflict with section 231-18. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985; am L 1986, c 344, §9]

[§244D-14] Investigations; contempts; fees. The director of taxation, and any agent authorized by the director to conduct any inquiry, investigation, or hearing hereunder, shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the director, the director or the director's agent authorized to conduct the hearing may subpoena witnesses and require the production of books, papers, and documents pertinent to the inquiry. No witness under subpoena authorized to be issued by this section shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate the witness, but such evidence or the books or papers so produced shall not be used in any criminal proceeding against the witness.

Contempts. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to the person by the director or the director's authorized agent or to produce any books and papers pursuant thereto, the director or the agent may apply to the circuit court of the circuit wherein the taxpayer resides or wherein the transaction, act, or activity under investigation has occurred, or to any judge of the court, setting forth such disobedience to process or refusal to answer, and the court or the judge shall cite the person to appear before the court or the judge to answer such question or to produce such books and papers, and, upon the person's refusal so to do, shall commit the person to jail until the person shall testify, but not for a longer period than sixty days. Notwithstanding the serving of the term of such commitment by any person, the director may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify.

Fees. Officers who serve subpoenas issued by the director or under the director's authority and witnesses attending hearings conducted by the director hereunder shall receive like fees and compensation as officers and witnesses in the circuit courts of the State, to be paid on vouchers of the director, from any moneys available for litigation expenses of the department of taxation. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985]

[§244D-15] Administration by director; rules and regulations. The administration of this chapter is vested in the director of taxation who may prescribe and enforce rules and regulations for the enforcement and administration of this chapter.

The rules and regulations shall be prescribed by the director, subject to chapter 91. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985]

§244D-16 Penalties. (a) The penalties provided by this section shall apply to any person whether acting as principal, agent, officer, or director, for oneself, itself, or for another person, and shall apply to each single violation, but shall not apply to any act the punishment for which is elsewhere prescribed by this chapter.

(b) Any dealer who sells liquor without a permit as required by this chapter shall be fined not more than $1,000. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985; am L 1986, c 344, §10; am L 1995, c 92, §16]

[§244D-17] Disposition of revenues. All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations, to be kept and accounted for as provided bylaw. [L Sp 1984 1st, c 1, pt of §2; gen ch 1985]