

**RULES
OF
DEPARTMENT OF REVENUE
MISCELLANEOUS TAX DIVISION**

**CHAPTER 1320-4-1
BEER AND ALCOHOLIC BEVERAGES OF NOT MORE THAN FIVE PERCENT
BY WEIGHT AND WHOLESALE TAX ACT**

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1320-4-1-.01 SURETY BOND. A distributor or a brewery may file with the department a bond in an amount exceeding his minimum requirements in order to eliminate the necessity of adjusting bonds annually because of increased business as disclosed by periodic review.

Authority: T.C.A. §67-1-102. *Administrative History:* Original rule certified June 7, 1974.

1320-4-1-.02 REPEALED.

Authority: T.C.A. §§67-1-102, 67-1-102, 57-5-206, and 1985 Tennessee Public Acts 315. *Administrative History:* Original rule certified June 7, 1974. Repeal filed June 27, 1990; effective August 11, 1990.

1320-4-1-.03 DEDUCTION FOR BEER EXPORTED, DAMAGED, LOST, STOLEN OR DESTROYED.

- (1) With respect to the tax levied pursuant to Part 2 of Chapter 5 of Title 57 of the Tennessee Code Annotated, it shall be determined that the taxable incident attaches when such beer has come to rest at the wholesaler's premises or warehouse. Provided, however, that a deduction from receipts and purchases shall be allowed persons subject to the tax on their monthly beer tax report submitted in accordance with rule 1320-4-1-.12, with respect to all beer or ale that, within that same monthly period in which said beer or ale has been received or purchased, has been exported from the state. Said deduction shall likewise be available for all beer or ale that has been damaged, lost, stolen, destroyed or otherwise become unsalable while in transit, by either common carrier or wholesaler's own transport equipment, prior to being stored in the wholesaler's warehouse. This is not to be construed to preclude said deduction for beer or ale that has been damaged or become unsalable in transit to the wholesaler's warehouse, when such damage or unsalability was not detected until after the beer was stored in the wholesaler's warehouse or as a matter of expediency and convenience such damaged or unsalable beer was temporarily stored in the wholesaler's warehouse until it could be destroyed or returned to the brewery. Said deduction may not be allowed on beer or ale that has been lost, stolen, damaged or rendered unsalable while in the wholesaler's storage or while in the course of trade after the product has left such wholesaler's storage.
- (2) Provided further, that said deduction may be disallowed if said monthly beer tax report is not accompanied with proper proof, satisfactory to the Commissioner of Revenue, showing that the said beer has been exported from the state of Tennessee; or damaged, lost, stolen, destroyed or otherwise become unsalable.

(Rule 1320-4-1-.03, continued)

Authority: T.C.A. §67-101. *Administrative History:* Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective May 16, 1983.

1320-4-1-.04 DEDUCTION FOR BEER SOLD TO GOVERNMENTAL INSTRUMENTALITIES.

- (1) With respect to T.C.A. §57-5-208, the exemption of tax shall be effectuated by the department of revenue allowing persons subject to the tax, duly licensed in Tennessee, to deduct from receipts and purchases on their monthly beer tax report submitted in accordance with Tennessee Administrative Compilation 1320-4-1-.12 all receipts and purchases sold, within that same monthly period, to post exchanges, ship service stores, commissaries and messes operated and controlled by the United States armed forces, and which are instrumentalities of the United States government.
- (2) Said deduction shall be allowed to wholesalers and breweries only if the following conditions are met:
 - (a) The commanding officer of a qualified military installation has furnished the Commissioner of Revenue a letter designating a commissioned officer of his command as the person authorized to sign invoices acknowledging receipt of such beverages. The signature of such designated officer shall be filed at the same time with the Department as a matter of record.
 - (b) The officer designated in each instance, as provided in subparagraph "a" above, has signed each invoice acknowledging receipt of the beer, and also signed a certificate, either on a separate sheet or written on the face of the invoice, certifying that the beer was sold to, and delivered to a post exchange, ship service store, commissary, mess or other such exempt agency, by a Tennessee wholesaler or brewery, and that said beer will be sold by such instrumentality of the government for consumption within the geographical boundaries of the government installation subject to regulations by the commanding officer of such installation.

Authority: T.C.A. §67-101. *Administrative History:* Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective May 16, 1983.

1320-4-1-.05 ISSUANCE OF TRANSPORTATION PERMITS. Tennessee licensees importing beer or other such beverages into this state to their own place of business for distribution by said licensee shall upon payment of annual fee of \$5.00 as provided in Section 57-224 of the Tennessee Code Annotated, and after filing separate application for each transporting vehicle, whether owned or leased, be issued a nontransferable transportation permit for each such vehicle, same to expire December 31 of each calendar year. Duplicates of transportation permits may be issued when the original permit is lost or destroyed. Applicant shall make affidavit as to the loss or destruction of the original permit and shall incorporate in his application for the duplicate all information required for the issuance of the original permit. If the original permit is subsequently found, it must be returned to the Department of Revenue.

Authority: T.C.A. §67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-1-.06 EMERGENCY TRANSPORTATION IN EVENT OF NON-AVAILABILITY OF VEHICLE FOR WHICH PERMIT HAS BEEN ISSUED. In the event a substitute vehicle has to be used because of the breakdown, or non-availability, of a vehicle for which a transportation permit has been issued, the distributor or his agent shall, prior to use of a substitute vehicle of his own or a leased vehicle obtain a statement from the person furnishing the substitute vehicle that the vehicle for which the permit was issued is out of service or is not available. Such statement shall show date of substitution, make, model and manufacturer's serial number of the substitute vehicle, as well as the estimated time and dates such vehicle will be used. This statement shall be kept with the substitute vehicle during the period of use along with the transportation permit issued for the vehicle not

available for use for the reasons set forth above. Notice in writing of such use of a substitute vehicle shall be immediately given to the Department, and failure to do so shall constitute a violation of this regulation and the statute.

Authority: T.C.A. §67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-1-.07 INTERSTATE SHIPMENTS. Interstate shipments of beer or other such beverages into or through the State of Tennessee, other than by a common carrier as contemplated by either Sections 57-230 or 57-231, Tennessee Code Annotated, must be accompanied and supported by an invoice, bill of sale, or bill of lading showing the true name and complete address of the consignor and the true name and complete address of the licensed consignee showing his street and number, rural route or other postal address. Such invoices, bills of sale, or bills of lading shall show the dates of shipment or purchase, invoice or bill of lading number, the number of cases, cartons or containers, the number of such containers to the case, carton or container, and the brand name of the beer or other such beverages. Such invoices, bills of sale or bills of lading shall show, if purchased from a consignor having more than one location, the exact name and address of the consignor where purchased or loaded. Any such shipments invoiced to a consignee who is not licensed to sell beer or other such beverages, whether within or without Tennessee, shall be deemed to be contraband and subject to seizure. Any official authorized to enforce the provisions of the beer tax law under Section 57-5-101, et seq., of the Tennessee Code Annotated, shall be authorized to hold without warrant all such shipments of beer or other such beverages until such time as it can be determined whether or not the consignee listed on the invoice in possession of the transporter is duly licensed to sell beer at the address shown on the invoice.

Authority: T.C.A. §67-1-102. *Administrative History:* Original rule certified June 7, 1974.

1320-4-1-.08 ANNEXATION. Cities or incorporated municipalities annexing territory by extension of corporate limits in which licensed beer retailers are located shall notify this Department and distributors selling beer within the annexed territory of the annexation, the effective date, and furnish such distributors with the name and location of licensed beer retailers located therein.

Authority: T.C.A. §67-1-102. *Administrative History:* Original rule certified June 7, 1974.

1320-4-1-.09 RECORD OF SALES. It shall be incumbent upon each and every wholesale beer dealer doing business within the State of Tennessee to keep accurate and adequate delivery tickets and records of each delivery of beer or other such beverages to individual retailers and other persons purchasing over five gallons of beer at a particular time. Such delivery tickets and records shall reflect the date that such merchandise was delivered, the name and address of the purchaser, date of sale, and the quantity, size, brand and price of each container sold. Each recipient of such merchandise, or his agent, shall sign as a receipt therefor a bill of sale or delivery ticket which shall be retained by the seller for at least two years subject to audit by agents of the Department of Revenue. Each and every wholesale beer dealer shall also keep an accurate daily record of each delivery of beer or other such beverages to persons purchasing less than five gallons of beer at a particular time. Such records shall reflect the daily quantity, size, brand and price of each container sold and shall also be retained by the wholesaler for a period of two years for inspection by agents of the Department of Revenue.

Authority: T.C.A. §67-1-102. *Administrative History:* Original rule certified June 7, 1974.

1320-4-1-.10 DESTRUCTION OF BEER. Any beer or other such beverage of not more than five percent (5%) by weight held by a licensed brewery, wholesaler or distributor in his inventory, or in transit by any means within this state, which becomes unsalable for any reason, or is damaged, and which is to be destroyed must be destroyed under the supervision of the Commissioner of Revenue or his authorized representative. Any person having beer to be destroyed must retain this beer in his possession until a minimum of fifty 24/12 oz. cases of beer, or its equivalent, has been accumulated and submit a list of such beverages stating the quantity, size of container and package and the reason for the requested destruction to the Commissioner of Revenue 10 days prior to the date on which such beer is to be destroyed. Provided, however, any person having beer to be destroyed in a quantity less

than fifty 24/12 oz. cases, or its equivalent, may likewise have the beer destroyed under the supervision of the Commissioner of Revenue or his authorized representative. However, the expense incurred by the Department in so doing shall be borne by the person requesting the destruction and such person shall make payment for such expense to the Department of Revenue promptly upon being billed. Otherwise such destroyed beer may not be included in any inventory reduction in determining tax due under provisions of Section 57-6-101, et. seq., Tennessee Code Annotated.

Authority: T.C.A. §67-1-102. *Administrative History:* Original rule certified June 7, 1974.

1320-4-1-11 ADJUSTMENTS FOR BREAKAGE. Claims for credit because of breakage for purposes of reducing inventory in determining tax due under provisions of T.C.A. §57-6-101 et seq. are to be made monthly. Adjustments to secure compliance with provision of said sections will be made by a representative of the department on completion of periodic audits.

Authority: T.C.A. §67-101. *Administrative History:* Original rule certified June 7, 1974.

1320-4-1-12 MONTHLY REPORTS.

- (1) All persons subject to tax under T.C.A. §57-5-201 et seq. and T.C.A. §57-6-101 et seq. must file reports with the Department of Revenue not later than the twentieth (20th) of each month covering all transactions of the previous month, at the same time paying any tax which may be due.
- (2) Such reports must be filed on forms provided or approved by the Department of Revenue. Reports must be prepared in a manner so as to be reasonably subject to audit by the Department of Revenue. Reports not filed and prepared in accordance with the provisions of this rule will not be accepted as timely filed.
- (3) All delinquent reports and/or payments shall be subject to penalty as provided at T.C.A. §67-1-804.

Authority: T.C.A. §§67-101, 67-1-102, 57-5-206, 57-6-105, and 67-1-804. *Administrative History:* Original rule certified June 7, 1974. Repeal and new rule filed June 27, 1990; effective August 11, 1990.

1320-4-1-13 REPORT OF SEIZURES. Any duly authorized representative of the commissioner, Highway patrolman, Sheriff, or other peace officer, shall promptly report in writing to the commissioner the circumstances of the seizure of any contraband property under the provisions of Chapter 3, Title 57, Tennessee Code Annotated, and furnish a copy of the receipt given the person from whom seized along with copy of all other pertinent documents. Any beer, other such beverages or vehicles so seized shall be delivered promptly to the Department of Revenue for storage and/or disposition.

Authority: T.C.A. §67-1-102. *Administrative History:* Original rule certified June 7, 1974.

1320-4-1-14 OUT OF STATE BREWERS. Out of state brewers and/or importers engaged in interstate commerce only shall be allowed the same privileges of qualification, domestication, registration and payment of all applicable taxes as are required of Tennessee brewers. Such out of state brewers and/or importers so desiring to qualify in this state will be unconditionally liable for any and all taxes, fees and charges imposed by statute upon Tennessee brewers.

Authority: T.C.A. §67-1-102. *Administrative History:* Original rule certified June 7, 1974.

1320-4-1-15 DEFINITION OF IMPORTER. The term "importer", as used in Tennessee Code Annotated, Chapters 3 and 4 of Title 57, shall mean a person, firm, corporation, joint-stock company, syndicate or association who brings beer manufactured or brewed in a foreign county from that country into the United States for the purpose of distribution within the United States, with the prior written authorization to do so from the brewer or

manufacturer of such products and whosoever does so shall: be registered, be bonded, file monthly reports be permitted to pay barrelage taxes due thereon and be permitted to appoint wholesalers as required by T.C.A. §57-6-104, all in the same manner as presently required of domestic brewers or manufacturers.

Authority: T.C.A. §§67-1-102, 57-5-206, and 57-6-105. **Administrative History:** Original rule filed October 15, 1975; effective November 14, 1975.