Chapter 473

1991 EDITION

Liquor Manufacturing and Importing Tax

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CROSS REFERENCES

Uniformity of taxation required, Const. Art. I, §32

473.010 Definitions. For the purposes of this chapter, unless the context clearly indicates a different meaning:

(1) "Alcoholic beverages" means and includes any fortified wine or similar fermented vinous liquor and fruit juice, or other fermented beverage fit for beverage purposes, containing more than one-half of one percent of alcohol by volume and not more than 21 percent of alcohol by volume.

(2) "Commission" means the Oregon Liquor Control Commission.

(3) "Malt beverages" means and includes beer, ale, porter, stout and similar beverages obtained by the alcoholic fermentation of an infusion or decoction of barley malt and hops in drinking water and containing more than one-half of one percent of alcohol by volume and not more than 14 percent of alcohol by volume.

(4) "Manufacturer" means every person who produces, brews, ferments, manufactures or blends an alcoholic beverage or a malt beverage, or both, within this state, or who imports or causes to be imported into this state an alcoholic beverage or a malt beverage for use, sale or distribution within the state. [Amended by 1953 c.120 §6; 1974 s.s. c.4 §8]

473.020 Administration of chapter by commission. The commission shall administer this chapter, and shall prescribe forms and make such rules and regulations as it deems necessary to enforce its provisions.

473.030 Tax on malt and alcoholic beverages. (1) A tax hereby is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of malt beverages at the rate of $2.60 per barrel of 31 gallons on all such beverages.

(2) A tax hereby is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of alcoholic beverages at the rate of 65 cents per gallon on all such beverages.

(3) In addition to the tax imposed by subsection (2) of this section, alcoholic beverages containing more than 14 percent of alcohol by volume and not more than 21 percent of alcohol by volume shall be taxed at 10 cents per gallon.

(4) In addition to the taxes imposed by subsections (2) and (3) of this section, alcoholic beverages containing not more than 21 percent of alcohol by volume shall be taxed an additional two cents per gallon. Notwithstanding any other provision of law, all moneys collected by the commission pursuant to this subsection shall be paid into the Wine Advisory Board Account established under ORS 576.765.

(5) The rates of tax imposed by this section upon malt beverages apply proportionately to quantities in containers of less capacity than those quantities specified in this section.

(6) The taxes imposed by this section shall be measured by the volume of beverages produced, purchased or received by any manufacturer. If the beverage remains unsold and in the possession of the producer at the plant where it was produced, no tax imposed or levied by this section is required to be paid until such beverage has become sufficiently aged for marketing at retail, but this subsection shall not be construed so as to alter or affect any provision of this chapter relating to tax liens or the filing of statements. [Amended by 1974 s.s. c.4 §9; 1975 c.424 §3; 1977 c.856 §19; 1983 c.651 §9; 1987 c.608 §3]

473.040 Additional tax on beverages manufactured out of state. (1) If the laws of another state, territory or nation, or the rules and regulations of any administrative body therein:

(a) Authorize or impose any tax, fee or charge upon the right to transport or import into such state any beer, malt liquor or wine manufactured in this state;

(b) Authorize or impose any different warehousing requirements or higher warehousing fees or inspection fees upon any beer, malt liquor or wine manufactured in this state and imported into or sold in such state, than are imposed upon beer, malt liquor and wine manufactured in such state; or

(c) Impose any higher fee for the privilege of selling or handling beer, malt liquor or wine manufactured in this state than is imposed for the privilege of handling or selling the same kind of beverages manufactured within such state or any other state,

the commission shall levy and collect similar taxes, fees and charges from licensees or persons selling in Oregon, beer, malt liquor and wine manufactured in such other state, territory or nation.

(2) The taxes, fees and charges authorized in this section are in addition to the taxes, fees and charges authorized to be assessed and collected by the commission under this chapter.

473.045 Tax on sale or use of agricultural products used by wineries; penalty for nonpayment. (1) A tax is hereby imposed upon the sale or use of all agricultural products used in a winery for making wine.

(2) The amount of the tax shall be $25 per ton of grapes of the vinifera varieties, whether true or hybrid.

(3) An equivalent tax is imposed upon the sale or use of vinifera or hybrid grape pro-

ducts imported for use in a winery licensed under ORS chapter 471 and ORS 474.105 and 474.115 for making wine. Such tax shall be $25 per ton of grapes used to produce the imported grape product. The tax shall be determined on the basis of one ton of grapes for each 150 gallons of wine made from such vinifera or hybrid grape products.

(4) A tax on the sale or use of products that are not subject to subsection (2) or (3) of this section that are used to make wine in this state shall be imposed at a rate of $.021 per gallon of wine made from those products.

(5) In the case of vinifera or hybrid grape products harvested in this state, $12.50 of such tax shall be levied and assessed against the person selling or providing such grape products to the winery. If the purchasing winery is licensed under ORS chapter 471 and ORS 474.105 and 474.115, that winery shall deduct the tax levied under this subsection from the price paid to the seller. If the purchasing winery is not licensed under ORS chapter 471 and ORS 474.105 and 474.115, the seller shall report all sales on forms provided by the State Department of Agriculture and pay $12.50 per ton as a tax directly to the department.

(6) Except for the tax specified in subsection (4) of this section the taxes specified under this section shall be levied and assessed to the licensed winery at the time of purchase of the product by the winery or of importation of the product, whichever is later. The tax specified in subsection (4) of this section shall be levied and assessed to the licensed winery at the time the wine is made.

(7) Except for taxes to be paid to the State Department of Agriculture pursuant to subsection (5) of this section, the taxes imposed by this section shall be paid by the licensed winery and collected by the Oregon Liquor Control Commission subject to the same powers as taxes imposed and collected under ORS chapter 473. Taxes to be paid by sellers under subsection (5) of this section shall be collected by the State Department of Agriculture in the manner provided in ORS 576.345 to 576.365. Failure to pay the tax subjects the violator to the same penalty as provided in ORS 576.991 (2) for failure to pay assessments to the department as required by ORS 576.345 to 576.365. The tax obligation for a calendar year shall be paid in two installments. Half shall be due on December 31 of the current calendar year. The remaining half shall be due the following June 30. [1977 c.690 §5; 1983 c.651 §6; 1987 c.804 §1; 1991 c.459 §415c]

Note: The amendments to 473.045 by section 415c, chapter 459, Oregon Laws 1991, first apply to tax years beginning on or after July 1, 1991. See section 452, chapter 459, Oregon Laws 1991.

Note: 473.045 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 473 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

473.050 When beverage tax not imposed. In computing any privilege tax imposed by ORS 473.030 or 473.040:

(1) No malt beverage or alcoholic beverage is subject to tax more than once.

(2) No tax shall be levied, collected or imposed upon any malt beverage or alcoholic beverage sold to the commission or exported from the state.

(3) No tax shall be levied, collected or imposed upon any malt beverage given away and consumed on the licensed premises of a brewery licensee, or sold to or by a voluntary nonincorporated organization of army, air corps or navy personnel operating a place for the sale of goods pursuant to regulations promulgated by the proper authority of each such service.

(4) No tax shall be levied, collected or imposed upon any malt beverage or alcoholic beverage determined by the commission to be unfit for human consumption or unsaleable.

(5) No tax shall be levied, collected or imposed upon the first 40,000 gallons, or 151,000 liters, of alcoholic beverage sold annually in Oregon from a United States manufacturer of alcoholic beverages producing less than 100,000 gallons, or 379,000 liters, annually. [Amended by 1971 c.158 §1; 1977 c.856 §20; 1981 c.199 §4; 1983 c.651 §7]

473.057 Reciprocal waiver of tax on wine authorized. No tax, fee or other charge shall be imposed on wine sent into this state from another state pursuant to ORS 471.229 if the state from which the wine is sent does not impose a tax, fee or charge on wine from this state sent into the other state in the manner described in ORS 471.229. [1989 c.511 §4]

473.060 Payment of taxes; refunds. The privilege taxes imposed by ORS 473.030 and 473.040 shall be paid to the commission. The taxes covering the periods for which statements are required to be rendered by ORS 473.070 shall be paid before the time for filing such statements expires or, as concerns alcoholic beverages, on or before the 20th day of the month after such beverages have been withdrawn from federal bond. If not so paid, a penalty of 10 percent and interest at the rate of one percent a month or fraction of a month shall be added and collected. The commission may refund any tax payment imposed upon or paid in error by any licensee,

and may waive the collection or refund the payment of any tax imposed and collected on alcoholic liquor subsequently exported from this state, sold to a federal instrumentality or to the commission, or determined by the commission to be unfit for human consumption or unsaleable. [Amended by 1955 c.241 §1; 1971 c.158 §2; 1981 c.199 §5]

473.070 Statements by manufacturers as to quantities produced. On or before the 20th day of each month, every manufacturer shall render to the commission a statement of the quantity of alcoholic beverages and malt beverages produced, purchased or received by the manufacturer during the preceding calendar month. [Amended by 1967 c.52 §1; 1981 c.199 §6]

473.080 Estimate by commission when statement not filed or false statement filed. If any manufacturer fails, neglects or refuses to file a statement required by ORS 473.070 or files a false statement, the commission shall estimate the amount of alcoholic beverages and malt beverages produced, purchased or received by the manufacturer and assess the privilege tax thereon. Such manufacturer shall be estopped from complaining of the amount so estimated. [Amended by 1967 c.52 §2]

473.090 Lien created by the tax. The privilege tax required to be paid by ORS 473.030 and 473.040 constitutes a lien upon, and has the effect of an execution duly levied against, any and all property of the manufacturer, attaching at the time the beverages subject to the tax were produced, purchased or received, as the case may be, and remaining until the tax is paid or the property sold in payment thereof. The lien created by this section is paramount to all private liens or encumbrances.

473.100 Seizure of property; notice of sale. (1) Whenever any manufacturer is delinquent in the payment of the privilege tax provided for in ORS 473.030 and 473.040, the commission or its duly authorized representative shall seize any property subject to the tax and sell, at public auction, property so seized, or a sufficient portion thereof to pay the privilege tax due, together with any penalties imposed under ORS 473.060 for such delinquency and all costs incurred on account of the seizure and sale.

(2) Written notice of the intended sale and the time and place thereof, shall be given to such delinquent manufacturer and to all persons appearing of record to have an interest in the property, at least 10 days before the date set for the sale. The notice shall be enclosed in an envelope addressed to the manufacturer at the last-known residence or place of business of the manufacturer in this state, if any; and in the case of any person appearing of record to have an interest in such property, addressed to such person at the last-known place of residence of the person, if any. The envelope shall be deposited in the United States mail, postage prepaid. In addition, notice shall be published for at least 10 days before the date set for such sale, in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in such county for the 10-day period. The notice shall contain a description of the property to be sold, a statement of the amount of the privilege taxes, penalties and costs, the name of the manufacturer and the further statement that, unless the privilege taxes, penalties and costs are paid on or before the time fixed in the notice for the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

473.110 Sale of property; disposal of proceeds. At the sale, the property shall be sold by the commission or by its duly authorized agent in accordance with law and the notice. The commission shall deliver to the purchaser a bill of sale for the personal property, and a deed for any real property so sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized under ORS 473.100 may be left at the place of sale at the risk of the manufacturer. If upon any such sale, the money received exceeds the amount of all privilege taxes, penalties and costs due the state from the manufacturer, the excess shall be returned to the manufacturer, and a receipt therefor obtained. However, if any person having an interest in or lien upon the property has filed with the commission, prior to the sale, notice of interest or lien, the commission shall withhold any such excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If the receipt of the manufacturer is not available, the commission shall deposit such excess money with the State Treasurer, as trustee for the owner, subject to the order of the manufacturer, the heirs, successors or assigns of the manufacturer.

473.120 Commission and Attorney General may both bring action. (1) The commission shall immediately transmit notice of the delinquency mentioned in ORS 473.100 to the Attorney General. The Attorney General shall at once proceed to collect all sums due to the state from the manufacturer under this chapter by bringing suit against the necessary parties to effect forfeiture of the bonds of the manufacturer, re-

ducing any deficiency to judgment against the manufacturer.

(2) The remedies of the state provided in ORS 473.090 to 473.120 are cumulative and no action taken by the commission or Attorney General constitutes an election on the part of the state or any of its officers to pursue one remedy to the exclusion of any other remedy provided in this chapter.

473.130 Estimate by commission as prima facie evidence. In any suit brought to enforce the rights of the state, the assessment made by the commission under ORS 473.080, or a copy of so much thereof as is applicable in such suit, duly certified by the commission and showing unpaid privilege taxes assessed against any manufacturer, is prima facie evidence:

(1) Of the assessment of the privilege tax and the delinquency thereof.

(2) Of the amount of the privilege tax, interest, penalties and costs due and unpaid to the state.

(3) That the manufacturer is indebted to this state in the amount of such privilege tax, interest and penalties therein appearing unpaid.

(4) That the law relating to assessment and levy of such privilege tax has been fully complied with by all persons required to perform administrative duties under this chapter.

473.140 Records to be kept by manufacturers and purchasers. Every manufacturer shall keep a complete and accurate record of all sales of alcoholic beverages and malt beverages, a complete and accurate record of the number of gallons imported, produced, purchased, manufactured, brewed or fermented, and the date of importation, production, purchase, manufacturing, brewing or fermentation. The records shall be in such form and contain such other information as the commission may prescribe. The commission, by rule or regulation, may require the delivery of statements by distributors to purchasers, with alcoholic beverages and malt beverages, and prescribe the matters to be contained therein. Such records and statements shall be preserved by the distributor and the purchaser respectively, for a period of two years, and shall be offered for inspection at any time upon oral or written demand by the commission or its duly authorized agents.

473.150 Inspection of manufacturer's records; records to be kept for prescribed period. (1) The commission may, at any time, examine the books and records of any manufacturer and may appoint such auditors, investigators and other employees as it deems necessary to enforce its powers and perform its duties under this section.

(2) Every manufacturer shall maintain and keep, within this state for two years, all records, books and accounts required by this chapter.

473.160 Records to be kept by persons transporting liquor. Every person transporting alcoholic beverages or malt beverages within this state, whether such transportation originates within or without this state, shall keep a true and accurate record of all such beverages transported. The record shall include ingredients which may be used in the manufacture, production, brewing or fermentation of the beverages, showing such facts with relation to such beverages, their ingredients and their transportation, as the commission may require. Such records shall be open to inspection by the representative of the commission at any time. The commission may require from any such person sworn returns of all or any part of the information shown by such records.

473.170 Failure to pay tax or to maintain records. (1) No manufacturer shall:

(a) Fail to pay the privilege tax prescribed in ORS 473.030 and 473.040 when it is due; or

(b) Falsify the statement required by ORS 473.070.

(2) No person shall:

(a) Refuse to permit the commission or any of its representatives to make an inspection of the books and records authorized by ORS 473.140 to 473.160;

(b) Fail to keep books of account prescribed by the commission or required by this chapter;

(c) Fail to preserve such books for two years for inspection of the commission; or

(d) Alter, cancel or obliterate entries in such books of account for the purpose of falsifying any record required by this chapter to be made, maintained or preserved. [Amended by 1967 c.52 §3]

473.180 Applicability to interstate and foreign commerce. None of the provisions of this chapter apply to commerce with foreign nations or commerce with the several states, except in so far as the same may be permitted under the Constitution and laws of the United States.

473.190 State has exclusive right to tax liquor. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the production, sale, mixing, serving, transporting, delivering or

handling of malt or other alcoholic liquors. [Amended by 1961 c.259 §4; 1967 c.577 §8]

473.200 [Repealed by 1967 c.577 §10]

473.210 [Amended by 1957 c.445 §2; 1965 c.141 §1; repealed by 1967 c.577 §10]

473.220 [Repealed by 1967 c.577 §10]

473.990 Penalties. (1) Violation of ORS 473.170 (1) is punishable upon conviction by a fine not exceeding $500 or by imprisonment in the county jail not exceeding six months, or both.

(2) Violation of ORS 473.170 (2) is punishable upon conviction by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding one year, or both.