

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

**CHAPTER 1320-4-2
SALES OF ALCOHOLIC BEVERAGES FOR CONSUMPTION
ON THE PREMISES**

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1320-4-2-.01 DEFINITIONS.

- (1) The term “alcoholic beverage” shall mean and include alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine, beer or wine. where the latter two (2) contain alcoholic content of five percent (5%) by weight, or less.
- (2) The term “alcoholic beverage tax” shall mean the gross receipts tax levied upon licensees for sales of alcoholic beverages for consumption on the premises by Chapter 211 of the Public Acts of 1967.
- (3) The term “Commission” shall mean the Alcoholic Beverage Commission of the State of Tennessee.
- (4) The term “Commissioner” shall mean the Commissioner of Revenue of the State of Tennessee.
- (5) The term “Department” shall mean the Department of Revenue of the State of Tennessee.
- (6) The term “licensee” shall mean any person authorized by the Commission or the Commissioner to sell alcoholic beverages for consumption on the premises.
- (7) The term “Sales Price” shall mean the total price for which an alcoholic beverage is sold and shall include, but not be limited to, the alcoholic beverage tax, applicable sales tax, both State and Local, and the cost of any services required to process the beverage for sale without any deductions therefrom on account of the cost of the beverage, the cost of the materials used, losses, or any other expenses whatsoever.
- (8) The term “sale” in addition to its usual meaning and except as otherwise provided by these rules, shall mean any use, transfer, exchange, barter, gift or disposition in any manner or by any means whatsoever except authorized returns to wholesalers.
- (9) The term “sale” shall not include the use of wine or distilled spirits which are consumed in the preparation of food.

Authority: T.C.A. §§67-1-102, 67-6-402, 67-6-102, and *Memphis Country Club v. Tidwell*, 503 S.W.2d 919 (Tenn. 1973). **Administrative History:** Original rule certified June 7, 1974. Amendment filed November 29, 1976; effective December 29, 1976. Amendment filed June 27, 1990; effective August 11, 1990. Amendment filed January 31, 1992; effective March 16, 1992.

1320-4-2-.02 ANNUAL TAX AND BOND OF LICENSEE.

- (1) (a) Every licensee permitted to do business in the state shall, as a condition precedent to the granting of a license to sell alcoholic beverages for consumption on the premises, post security with the Commissioner of Revenue in the form of one of the following:
 1. a corporate surety indemnity bond;
 2. a cash deposit;
 3. a bond properly secured by a certificate of deposit.

Such security shall be conditioned upon and be posted to insure the proper payment of all taxes administered by the commissioner of revenue and incurred in connection with the sale of alcoholic beverages for consumption on the premises for which the license applicant may become liable, including sales taxes on the sale of alcoholic beverages for consumption on the premises. All bonds must be filed on forms provided by the commissioner of revenue.
- (b) For all licensees other than restaurants selling wine only the amount of such initial security shall be \$10,000.
- (c) For restaurants selling wine only the amount of such initial security shall be \$2,000.
- (2) After monthly reports pursuant to rule 1320-4-2-.05(2) have been received by the commissioner of revenue which cover the initial three (3) full months of a licensee's operating experience and upon request in writing by the licensee the required security will be adjusted to an amount equal to four (4) times the average monthly tax liability established during the initial three (3) full months operating experience of the licensee. The amount of security required may not be reduced to an amount which is less than \$1,000.
- (3) At any time following the completion of the licensee's initial three (3) months of operating experience, the commissioner may determine that the required security be adjusted to reflect four (4) times the average monthly tax liability. Additional security must then be posted in the form of a rider to a corporate surety bond, additional cash deposit or new or additional certificate of deposit, as may be appropriate.
 - (a) In the case of any such determination made based on the licensee's initial three (3) months of operating experience, any additional security required to be posted shall secure and be subject to any taxes, penalty and interest connected with the sale of alcoholic beverages for consumption on the premises, including applicable sales taxes, accruing against the principal(s) since the beginning of the effective period of the license.
 - (b) In all other cases, any additional security required to be posted shall secure and be subject to those taxes, penalty and interest connected with the sale of alcoholic beverages for consumption on the premises accruing against the principal(s) prospectively only.
- (4) Any security posted with the commissioner shall not be released unless and until the commissioner has made a determination, through audit of the licensee, that all liability secured by the security has been paid or unless and until the applicable statute of limitations on the assessment of such liability has run, whichever occurs first.
- (5) Failure to post security as required by the commissioner prior to any licensing period shall cause any application for a new or renewal license to be denied.

(Rule 1320-4-2-.02, continued)

- (6) The forfeiture or cancellation of all or any part of any security required to be posted, for any reason whatsoever, shall cause the license of a licensee to be automatically revoked.
- (7) (a) All the provisions of this rule shall apply to “wine only” restaurant licensees licensed under the provisions of T.C.A. §57-4-101(n), except that after monthly reports pursuant to rule 1320-4-2-.05(2) have been received by the Commission of Revenue covering the initial three (3) full months of such licensees operating experience, a “wine only” restaurant licensee may request in writing that the required surety be adjusted to an amount equal to twenty percent of four (4) times the average monthly liability established during the initial three (3) full months operating experience of such licensee, if such average monthly tax liability is determined by the Commissioner of Revenue to warrant an adjustment to a maximum penal sum of less than \$2,000.00. The amount of security required of a “wine only” restaurant licensee may not be reduced to an amount which is less than twenty percent of \$1,000.00.
- (b) At any time following the completion of the “wine only” restaurant licensees’ initial three (3) months of operating experience, the commissioner may determine that the required security be adjusted to reflect twenty percent of four (4) times the average monthly tax liability. Financial security must than be posted in accordance with paragraph three (3) above.

Authority: T.C.A. §§67-1-102 and 57-4-302. **Administrative History:** Original rule certified June 7, 1974. Amendment filed November 29, 1976; effective December 29, 1976. Amendment filed December 31, 1977; effective January 16, 1978. Amendment filed June 27, 1990; effective August 11, 1990. Amendment filed May 7, 1992; effective August 29, 1992. Amendment filed February 5, 1993; effective May 29, 1993.

1320-4-2-.03 COMPUTATION OF TAX.

- (1) The amount of alcoholic beverages tax and sales tax due monthly or during an accounting period shall be computed by dividing the sum of the alcoholic beverage tax rate and the applicable sales tax rate, plus 100%, into the total sales price of all alcoholic beverages sold during each calendar month or accounting period. The resultant figure shall then be used as a taxable base to which the alcoholic beverages tax rate shall be applied to arrive at the amount of alcoholic beverages tax due, and the figure to which the applicable sales tax shall be applied to arrive at the amount of sales tax due on alcoholic beverages only.

Example: Based on sales price of alcoholic beverages in the amount of \$1,500.

100	%	Normal Sales Price without tax
15	%	Alcoholic Beverage tax rate
<u>7.75</u>	%	State and Local Sales tax rate
122.75		(5.5% state rate and 2.25% local rate, if local rate is different, adjust accordingly)

$$\frac{1500.00}{1.2275} = 1222.00 \text{ taxable base}$$

\$1222.00	Taxable base	\$1222.00	Taxable base
<u>.15</u>	Alcoholic Beverage tax rate	<u>.0775</u>	State and Local sales tax rate
\$ 183.30	Total alcoholic beverage tax liability	\$ 94.71	Total sales tax liability on alcoholic beverages only

Authority: T.C.A. §§67-1-102 and 57-4-302. **Administrative History:** Original rule certified June 7, 1974. Amendment filed November 29, 1976; effective December 29, 1976. Amendment filed June 27, 1990; effective August 11, 1990.

1320-4-2-.04 RESTRICTIONS ON DISPOSITION OF ALCOHOLIC BEVERAGE.

- (1) A licensee shall not make any disposition of liquor except through sales by the drink for consumption on the premises and shall not make any disposition of wine except through sales for consumption on the premises.
- (2) A licensee may be permitted to reduce his inventory by the amount of any alcoholic beverages lost due to theft, breakage or acts of nature only if proper proof of loss is supplied the department as follows:
 - (a) As soon as practicable after a loss of alcoholic beverages due to the theft occurs, provide the Department with proof that the theft was reported to the proper law enforcement agency and that the insurer who has insured the goods has paid the claim for their loss. A certificate from the department will be provided the licensee upon receipt of the required proof. A copy of said department certification shall be retained by the licensee for a period of three years as evidence of proper authorization for such inventory reduction.
 - (b) As soon as practicable after a loss of alcoholic beverages due to breakage or acts of nature occurs, obtain the assistance of, a department agent to observe the loss and furnish a certificate stating the quantity and brand of the liquor on which the identification stamp remains identifiable with the federal strip stamp intact, and with reference to wine, the agent must be able to determine the quantity and brand of wine on which the crown, cap, seal, or cork remain intact and unbroken. In instances where containers are not broken but the beverage is declared unsalable by the Pure Food and Drug Administration or other appropriate authority the licensee may be allowed inventory reduction if the products are destroyed by or in the presence of a department agent and so certified. A copy of said certificate shall be retained by the licensee as evidence of proper authorization for a period of three years for such inventory reduction.
- (3) Wine or distilled spirits to be used and consumed in the preparation of food shall be stored separately from those alcoholic beverages sold by the drink for consumption on the premises. The wine or distilled spirits shall be used and consumed exclusively in the preparation of food. If any portion of the contents of a bottle of wine or distilled spirits is sold by the drink for consumption on the premises, the licensee shall be liable for liquor-by-the-drink tax on the total disposition, as if the entire contents of the bottle had been sold by the drink.

Authority: T.C.A. §§67-1-102 and 57-4-302. **Administrative History:** Original rule certified by the Department of Revenue June 7, 1974. Amendment filed November 29, 1976; effective December 29, 1976. Amendment filed June 27, 1990; effective August 11, 1990.

1320-4-2-.05 REPORTS OF LICENSEES.

- (1) (a) Each licensee shall post with the commissioner, on prescribed forms, price schedules of alcoholic beverages offered for sale, and show thereon the regular sales price of each drink listed, including applicable sales tax and alcoholic beverage tax. When drinks as listed on the posted schedule are sold at prices other than regular sales prices, i.e. happy hour etc., the schedule shall reflect the event or activity and its duration as to hours per day and days per week along with the special price at which drinks are sold.
- (b) These schedules must be posted with the department prior to entering business and when any change is made in any information contained on a price schedule as posted with the commissioner, a revised schedule must be forwarded to the department prior to the effective date of such change.

(Rule 1320-4-2-.05, continued)

- (c) The licensee must base his sales price and other information required to be stated on the price schedule upon the type and quality of alcoholic beverages ordinarily sold by him.
- (2) (a) Each licensee reporting on a monthly basis shall, on or before the fifteenth (15th) day of each month, make and deliver to the commissioner a tax report for the preceding calendar month upon such forms as may be prescribed by the commissioner, verified by the official agent making such tax report. The tax report shall be filed for each calendar month, or fraction thereof, during which a licensee is authorized to sell alcoholic beverages. A separate tax report shall be filed monthly for each established place of business.
- (b) Upon written request the commissioner may, in his discretion, authorize a taxpayer to file returns on an accounting period basis as provided at T.C.A. §67-1-106. Each licensee reporting on an accounting period basis shall, on or before the fifteenth (15th) day immediately following the close of the accounting period, make and deliver to the commissioner a tax report for the preceding accounting period upon such forms as may be prescribed by the commissioner, verified by the official or agent making such tax report. The tax report shall be filed for each accounting period, or fraction thereof, during which a licensee is authorized to sell alcoholic beverages. A separate tax report shall be filed each accounting period for each established place of business.
- (3) At the time of submitting the tax report described herein, the licensee shall pay any alcoholic beverage tax required to be paid to the commissioner.
- (4) The commissioner may, for good cause shown, grant an extension of time, not to exceed thirty days, for a licensee to file his tax report and pay the tax due. Requests for such extensions must state why the extension is desired, must be made in writing, signed by the licensee and be made before the due date of the tax report and tax.

Authority: T.C.A. §§67-1-102, 67-1-106, and 57-4-302. **Administrative History:** Original rule certified by the Department of Revenue June 7, 1974. Amendment filed November 29, 1976; effective December 29, 1976. Amendment filed June 27, 1990; effective August 11, 1990.

1320-4-2-.06 RECORDS OF LICENSEES.

- (1) All licensees shall have available for use by all customers menus which clearly indicate the sales price of alcoholic beverages, both liquor and wine, and that the sales price includes the applicable rate of alcoholic beverage tax and sales tax.
- (2) All licensees shall keep and preserve adequate and complete records to determine any tax due on the sales of alcoholic beverages. Such records shall include at least the following:
 - (a) A daily record of all sales which shall at least consist of daily cash register tapes and/or daily guest checks. Summary totals of sales will not be acceptable by the department for audit purposes unless supported by cash register tapes or guest checks for the corresponding sales activity period. Entries on guest checks evidencing sales of alcoholic beverages must not be commingled with entries evidencing sales of food, beer and other items. Entries evidencing sales of alcoholic beverages must either be made on a separate document or on the bottom or reverse of any guest check showing sales of other items. The document showing sales of alcoholic beverages must separate liquor and wine sales. If cash registers are used to record sales, alcoholic beverage sales must be keyed separately from sales of food, beer and other items. The sales of alcoholic beverages must further be keyed to identify liquor sales separate from wine sales. If the sales of liquor and wine, as shown by the books of the licensee, do not

(Rule 1320-4-2-.06, continued)

bear a markup over purchases approximately the same as the average markup shown by the price schedule, the commissioner will consider the books of the licensee insufficient to show the proper tax liability.

- (b) Receipts derived from alcoholic beverages sold at other than regular sales prices as posted with the department on the price schedule, i.e., happy hour sales, etc., must be clearly recorded on cash register tapes or guest checks showing each sale at other than regular prices during each particular period or activity. Where adequate records are not maintained by the licensee to substantiate sales at other than posted selling prices, the licensee shall be liable for tax on the total disposition as though all sales were made at regular prices.
 - (c) A record of all merchandise purchased for resale, including all invoices, delivery tickets, bills of lading and copies of purchase orders. (The purchase date shall be considered to be the date of the purchase invoice issued to the licensee by a licensed wholesaler of alcoholic beverages.)
 - (d) An itemized statement of inventory, by brand name, size, and dollar value of alcoholic beverages on hand the last day of each month. Upon written request, the commissioner may allow inventory statements to be maintained on a basis other than a calendar month basis if the accounting period of the licensee is other than a calendar month period.
- (3) Licensees shall retain all books and records provided for herein for a period of at least four years, unless earlier destruction is authorized by the commissioner. Where both guest checks (sales tickets) and cash register tapes are used concurrently to evidence sales of alcoholic beverages such guest checks may be destroyed 60 days following date of sale.
 - (4) Books and records other than those specified in paragraph (3) may be used to determine tax liability if it is established to the satisfaction of the commissioner that such books and records accurately document the sales activity, including happy hour sales, in a manner such that tax liability can be properly determined.
 - (5) The filing of false tax reports or the failure on the part of any licensee to file required reports or schedules or to maintain adequate and accurate records to account for the purchase and distribution of alcoholic beverages and by which the true tax liability may be established will be cause for the commissioner or his authorized representative to determine the tax liability of such licensee from whatever source of information may be available to him. An assessment made by the commissioner pursuant to this authority shall be binding as if made upon the sworn statement or tax report of the licensee liable for the payment of alcoholic beverage tax and any such assessment which is lawfully made against such licensee shall be presumed accurate unless adequate records are submitted evidencing otherwise.

Authority: T.C.A. §§67-1-102 and 57-4-302. **Administrative History:** Original rule certified by the Department of Revenue June 7, 1974. Amendment filed November 29, 1976; effective December 29, 1976. Amendment filed December 15, 1977; effective January 16, 1978. Amendment filed June 27, 1990; effective August 11, 1990.

1320-4-2-.07 TIPS, GRATUITIES, AND SERVICE CHARGES.

- (1) The term “tip” means a monetary gift or gratuity given by a customer to a server in a bar or restaurant or similar establishment. Tips are not normally includable in the sales price of alcoholic beverages sold.

(Rule 1320-4-2-.07, continued)

- (2) (a) Tips will, however, be included in the sales price of alcoholic beverages if the tips are either mandatory on the part of the purchaser or if the tips are not returned to the persons performing the service.
- (b) A charge which is automatically added to the customer's bill by the seller shall be considered mandatory, whether styled by the seller as a tip, gratuity or otherwise. This presumption may be overcome by an affirmative showing by the seller by a preponderance of the evidence that the prevailing practice was that payment of such charge was not required.

Authority: T.C.A. §§67-1-102, 67-6-402, 67-6-102, and *Memphis Country Club v. Tidwell*, 503 S.W.2d 919 (Tenn. 1973). **Administrative History:** Original rule filed January 31, 1992; effective March 16, 1992.

1320-4-2-.08 TRANSFER OF OWNERSHIP OF BUSINESS.

- (1) (a) Any person who purchases or otherwise obtains ownership of a business engaged in sales of alcoholic beverages for consumption on the premises shall not make sales of alcoholic beverages prior to receiving a license from the Alcoholic Beverage Commission and registering for sales and alcoholic beverage taxes with the Department.
 - (b) Any person who purchases or otherwise obtains ownership of a business engaged in sales of alcoholic beverages for consumption on the premises and who makes sales of alcoholic beverages will be held liable for tax on those sales, notwithstanding that such person has failed to properly obtain an alcoholic beverage license and/or tax registration or has operated illegally under another person's license and/or tax registration.
- (2) (a) Any person who sells, transfers or otherwise terminates his ownership of a business engaged in sales of alcoholic beverages for consumption on the premises shall provide notice of such sale, transfer or termination to the Department within fifteen days of the date of such sale, transfer or termination. For the purpose of this rule, "notice" means direct written notice to the Department of Revenue as part of the final alcoholic beverage tax return and final sales tax return of the business and surrender of the alcoholic beverage license to the Alcoholic Beverage Commission.
 - (b) Any person who upon sale or transfer of his business allows or permits the new owner or operator to remit tax, make wholesale purchases or conduct business in any manner using the seller's or transferor's alcoholic beverage license or tax registration shall be jointly and severally liable with the owner or operator for any unpaid taxes accrued by virtue of sales of alcoholic beverages for consumption on the premises during the period of such operation.
 - (c) Any person who fails to provide notice to the Department as required by this rule with the result that the business continues to operate under the seller's or transferor's alcoholic beverage license and/or tax registration shall be presumed to have allowed or permitted such operation.

Authority: T.C.A. §§57-4-201, 57-4-301, 57-4-303, and 67-1-102. **Administrative History:** Original rule filed January 31, 1992; effective March 16, 1992.