

TITLE 5. TAXATION

CHAPTER 201. LIQUOR TAXES

SUBCHAPTER A. TAX ON LIQUOR OTHER THAN ALE AND MALT LIQUOR

Sec. 201.01. LIQUOR. In this subchapter, "liquor" does not include ale or malt liquor.

Sec. 201.011. TIMELY FILING; DILIGENCE. A person filing a report or making a tax payment complies with the filing requirements for timeliness for a report not filed or a payment not made on time if the person exercised reasonable diligence to comply with the filing requirements and the failure to file or the making of a late payment is not the fault of the person.

Sec. 201.02. "FIRST SALE" DEFINED. In this subchapter, "first sale":

(1) as applied to liquor imported into this state by the holder of a wholesaler's permit authorizing importation, means the first actual sale by the permittee to the holder of any other permit authorizing the retail sale of the beverage or to the holder of a local distributor's permit; and

(2) as applied to all other liquor, means the first sale, possession, distribution, or use in this state.

Sec. 201.03. TAX ON DISTILLED SPIRITS. (a) A tax is imposed on the first sale of distilled spirits at the rate of \$2.40 per gallon.

(b) The minimum tax imposed on packages of distilled spirits containing two ounces or less is five cents per package.

(c) Should packages containing less than one-half pint but more than two ounces ever be legalized in this state, the minimum tax imposed on each of these packages is \$0.122.

Sec. 201.04. TAX ON VINOUS LIQUOR. (a) A tax is imposed on the first sale of vinous liquor that does not contain over 14 percent of alcohol by volume at the rate of 20.4 cents per gallon.

(b) A tax is imposed on vinous liquor that contains more than 14 percent of alcohol by volume at the rate of 40.8 cents per gallon.

(c) A tax is imposed on artificially carbonated and natural sparkling vinous liquor at the rate of 51.6 cents per gallon.

Sec. 201.05. REPORTING SYSTEM. A person who holds a permit authorizing the importation of liquor into this state shall pay the liquor tax by the reporting system under bond.

Sec. 201.06. PAYMENT OF TAX; DISCOUNTS. (a) The tax on liquor, levied and computed under this subchapter, shall be paid by a remittance payable to the comptroller and forwarded together with any required sworn statement of taxes due to the commission in Austin on or before the date it is due.

(b) A discount of two percent of the amount due shall be withheld by the permittee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

Sec. 201.07. DUE DATE. The tax on liquor is due and payable on the 15th of the month following the first sale.

Sec. 201.075. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the permit of a permittee who fails to file a report or return or to make a tax payment required by this subchapter. Chapter 2001, Government Code does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice shall be given to the permittee or the permittee's agent or employee by registered or certified mail if not given in person.

(c) The commission shall terminate a suspension made under this section when the permittee files all required returns and makes all required tax payments that are due.

Sec. 201.08. EXEMPTION FROM TAX. (a) No tax may be collected on liquor:

- (1) shipped out of state for consumption outside the state; or
- (2) sold aboard a ship for ship's supplies.

(b) The commission shall provide forms for claiming the exemption prescribed by this section.

(c) A tax credit shall be allowed for payment of any unintended or excess tax.

Sec. 201.09. REFUND DUE ON DISPOSITION OUTSIDE OF STATE. The holder of any permit authorizing the transportation of liquor out of this state may apply to the commission for a refund of the excise tax on liquor on which the state tax has been paid on proper proof that the liquor was sold or disposed of outside of this state.

Sec. 201.10. EXCESS TAX. A permittee is entitled to a refund or tax credit on future tax payment for any excess tax on liquor paid through oversight, mistake, error, or miscalculation.

Sec. 201.11. TAX CREDITS AND REFUNDS. The commission shall provide by rule for the equitable and final disposition of tax refunds or credits when liquor tax is overpaid or paid by mistake. It shall prescribe the time and manner for filing claims for credits and refunds and provide appropriate forms.

Sec. 201.12. APPROPRIATIONS FOR REFUNDS. Necessary funds from the collection of the tax on imported liquor before the revenue from that tax has been allocated may be appropriated for the payment of refunds of tax on imported liquor.

Sec. 201.13. SALE OF UNTAXED LIQUOR PROHIBITED. No person may sell, offer for sale, or store for the purpose of sale in this state any liquor on which the state or federal tax, if due, has not been paid.

Sec. 201.14. INVOICES OF TRANSPORTED LIQUOR. A holder of a permit authorizing the wholesaling of liquor and the transporting of liquor outside of this state shall furnish to the commission duplicate copies of all invoices for the sale of liquor transported outside of this state within 24 hours after the liquor has been removed from the permittee's place of business.

Sec. 201.15. EVIDENCE IN SUIT. In any suit brought to enforce the collection of tax owed by the holder of a permit authorizing the importation of liquor into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

- (1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and
- (2) compliance by the commission with the provisions of this code relating to the computation and levy of the tax.

Sec. 201.16. PENALTY. A person who violates any section of this subchapter except Section 201.09 or 201.13 of this code commits a misdemeanor which on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for not less than 30 days nor more than one year. Violations of Sections 201.09 and 201.13 are punishable in accordance with Section 1.05 of this code.

Sec. 201.17. LIQUOR IN METRIC CONTAINERS. For the purpose of the taxes imposed on liquor by this subchapter and on ale and malt liquor by Subchapter B of this chapter, if the liquor is in metric containers the amount of tax due is determined by converting the metric amount into the equivalent amount in gallons and applying the appropriate tax rate. The commission shall prepare tables showing the amount of tax due on various types of liquor, including ale and malt liquor, in metric containers.

SUBCHAPTER B. TAX ON ALE AND MALT LIQUOR

Sec. 201.41. FIRST SALE. In this subchapter, "first sale" means:

(1) the first actual sale of ale or malt liquor by the holder of a wholesaler's, general class B wholesaler's, or local class B wholesaler's permit to:

- (A) a permittee authorized to sell to ultimate consumers;
- (B) a local distributor permittee; or
- (C) a private club registration permittee; or

(2) the importation of ale or malt liquor under Section 107.07 of this code.

Sec. 201.42. TAX ON ALE AND MALT LIQUOR. A tax is imposed on the first sale of ale and malt liquor at the rate of \$0.198 per gallon.

Sec. 201.43. DUTY TO PAY TAX; DUE DATE. (a) The permittee making the taxable first sale shall pay the tax on ale and malt liquor imposed under Section 201.42 of this code.

(b) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs.

Sec. 201.44. TAX EXEMPTIONS. No tax may be collected on ale or malt liquor:

- (1) shipped out of the state for consumption outside the state; or
- (2) sold aboard a ship for ship's supplies.

Sec. 201.45. PROHIBITION OF SALE OF UNTAXED ALE OR MALT LIQUOR. No person may sell, offer for sale, or store for the purpose of sale in this state any ale or malt liquor on which the state or federal tax, if due, has not been paid.

Sec. 201.46. TAX LIABILITY. A person possessing ale or malt liquor on which the tax is delinquent is liable for the delinquent tax in addition to the criminal penalties.

Sec. 201.47. TAX REFUNDS AND CREDITS. (a) The holder of a permit authorizing the transportation of ale or malt liquor out of the state may apply to the commission for a refund of the excise tax on ale or malt liquor that has been paid on proper proof that the ale or malt liquor was sold or disposed of outside the state.

(b) Tax credits shall be allowed for overpayment or mistaken payment of the tax on ale or malt liquor, and the commission shall provide by rule for the equitable and final disposition of the tax credits.

Sec. 201.48. PAYMENT. The tax on ale and malt liquor shall be paid by a remittance payable to the comptroller and forwarded, together with any required sworn statements of taxes due, to the commission in Austin on or before the date it is due. A discount of two percent of the amount due shall be withheld by the permittee or licensee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

Sec. 201.49. MAY REQUIRE INFORMATION. (a) The commission may require all brewers, nonresident brewers, importers, wholesalers, and class B wholesalers of ale and malt liquor to provide information as to purchases, sales, and shipments to enable the commission to collect the full amount of the tax due. No brewer, nonresident brewer, importer, wholesaler, or class B wholesaler may fail or refuse to furnish the required information.

(b) The commission may seize or withhold from sale the brewer's, nonresident brewer's, importer's, wholesaler's, or class B wholesaler's ale or malt liquor for failure or refusal to supply the information required under Subsection (a) of this section or to permit the commission to make an investigation of pertinent records, whether the records are inside or outside of this state.

Sec. 201.50. INVOICES OF TRANSPORTED LIQUOR. The holder of a permit authorizing the wholesaling of liquor and the transportation of it out of the state shall furnish to the commission duplicate copies of all invoices for the sale of liquor transported out of the state within 24 hours after the liquor has been removed from the permittee's place of business. Violation of this section is punishable by the penalty prescribed in Section 201.16 of this code.

Sec. 201.51. EVIDENCE IN SUIT. In any suit brought to enforce the collection of tax due on ale or malt liquor brewed in or imported into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code relating to the computation and levy of the tax.

Sec. 201.52. ALE AND MALT LIQUOR IN METRIC CONTAINERS. Section 201.17 of this code applies to the taxation of ale and malt liquor in metric containers.

Sec. 201.53. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the permit of a permittee who fails to file a report or return or to make a tax payment required by this subchapter. Chapter 2001, Government Code does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice shall be given to the permittee or the permittee's agent or employee by registered or certified mail if not given in person.

(c) The commission shall terminate a suspension made under this section when the permittee files all required returns and makes all required tax payments that are due.

SUBCHAPTER C. STAMPS

Sec. 201.71. STAMPS. Unless the liquor is exempt from tax or payment has been or is to be made by a permittee in accordance with the provisions of Subchapter A or B of this chapter, the tax levied under Subchapter A or B shall be paid by affixing a stamp or stamps on each bottle or container of liquor. The stamp shall be affixed in strict accordance with the commission's rules and regulations.

Sec. 201.72. DUTY TO PRINT. The commission and the board of control shall have engraved or printed the liquor and beer tax stamps required by this code. The board of control shall let the contracts for the stamps required by this code as provided by law. The commission shall expend funds necessary to keep an ample supply of stamps on hand.

Sec. 201.73. DESIGN. The commission shall prescribe the design and denomination of the tax stamps. Each stamp must show the amount of tax for which it evidences payment and shall contain the words "Texas State Tax Paid."

Sec. 201.74. OPERATION OF TAX STAMP PROGRAM. (a) The commission is responsible for the custody and sale of tax stamps and for the proceeds of the sales.

(b) The commission may sell tax stamps only to a person designated by the commission.

(c) The commission may designate any state or national bank in this state as its agent to deliver and collect for any tax stamps and to remit the sale proceeds to it.

(d) Invoices for tax stamps shall be issued by the commission in duplicate and numbered consecutively. The original of the invoice shall be forwarded to the purchaser or to the person in whose care it may be sent for the benefit of a qualified purchaser. The second copy shall be kept by the commission.

(e) The commission shall keep a permanent record of all tax stamps received and sold. This record shall provide a perpetual inventory of all tax stamps and their disposition.

Sec. 201.75. DELIVERY OF STAMPS. The commission shall prescribe the manner in which tax stamps are delivered to its inspectors in charge of ports of entry.

Sec. 201.76. REFUNDS. (a) The commission may make refunds for tax stamps in all cases where:

(1) stamped liquor is returned to the distillery or manufacturer, on certification by a duly authorized representative of the commission who inspected the shipment;

(2) stamped liquor has been destroyed, on certification by a duly authorized representative of the commission that the liquor has been destroyed;

(3) a person who has been authorized to purchase tax stamps and is in possession of unused tax stamps on discontinuation of business; and

(4) tax stamps of improper value have been erroneously affixed to a bottle or container of liquor and those tax stamps have been destroyed in a manner prescribed by the commission.

(b) To obtain a refund under this section, it must be shown that the tax stamps for which a refund is asked were purchased from the commission and that the refund is made to a person authorized to purchase tax stamps from the commission. No other refunds for tax stamps are allowed.

(c) Sufficient funds to pay refunds for tax stamps may be appropriated from the revenue derived from the sale of the tax stamps before that revenue has been allocated.

Sec. 201.77. WHO MAY PURCHASE STAMPS. The commission shall designate those permittees or other persons entitled to purchase state tax stamps.

Sec. 201.78. STAMPS FOR WINE. Tax stamps for wine shall be issued in multiples of the rate assessed for each pint and for each one-tenth of a gallon.

Sec. 201.79. ALTERNATIVE METHOD OF COLLECTING TAX ON WINE. The commission may provide by rule an alternative method of collecting the tax on wine. That method may dispense with the use of tax stamps.

Sec. 201.80. EXEMPTION. The commission may prescribe by order special rules for the payment of the tax imposed by Subchapter A or B of this chapter in any circumstance that in the judgment of the commission creates an emergency or makes it impractical to require the affixing of tax stamps.

Sec. 201.81. STAMPS FOR DISTILLED SPIRITS. Tax stamps for distilled spirits may be issued only in multiples of the rate assessed each half-pint, except that when distilled spirits are contained in containers of one-tenth of a gallon, tax stamps shall be issued at the assessed rate for each type of distilled spirit.

Sec. 201.82. IMPORTED DISTILLED SPIRITS; FEDERAL STAMP. A container of distilled spirits that has a federal liquor strip stamp attached or that has been imported from a foreign country is subject to taxation and must have the appropriate state tax stamp for distilled spirits affixed to it, unless it is taxed under the reporting system.

CHAPTER 203. BEER TAX

Sec. 203.01. TAX ON BEER. A tax is imposed on the first sale of beer manufactured in this state or imported into this state at the rate of six dollars per barrel.

Sec. 203.02. "FIRST SALE". In this chapter, "first sale" means:

(1) the first actual sale of beer by the holder of a distributor's license or by the holder of a manufacturer's license acting under the authority of Section 62.12 of this code, to:

- (A) a permittee or licensee authorized to sell to ultimate consumers;
- (B) a local distributor permittee; or
- (C) a private club registration permittee; or

(2) the importation of beer under Section 107.07 of this code.

Sec. 203.03. DUTY TO PAY TAX; DUE DATE. (a) The licensee making the taxable first sale shall pay the tax on beer imposed under Section 203.01 of this code.

(b) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs.

Sec. 203.04. TAX ON UNSALABLE BEER. No tax imposed under Section 203.01 of this code may be imposed or collected on beer that for any reason has been found and declared to be unsalable by the commission or administrator. A manufacturer or distributor is entitled to a refund of any tax he has paid on unsalable beer.

Sec. 203.05. EXEMPTION FROM TAX. (a) No tax may be collected on beer:

- (1) shipped out of this state for consumption outside of this state;
- (2) sold aboard ships for ship's supplies; or
- (3) shipped to any installation of the national military establishment under federal jurisdiction for consumption by military personnel on that installation.

(b) The commission shall provide forms on which distributors and manufacturers may claim these exemptions from the tax on beer.

Sec. 203.06. EXCESS TAX. A manufacturer or distributor is entitled to a refund or credit on future tax payment for any excess tax on beer paid through oversight, mistake, error, or miscalculation.

Sec. 203.07. CLAIMS FOR REFUNDS. (a) The commission or administrator shall prescribe by rule for the claiming of tax refunds and credits authorized under this chapter, including provisions as to the time and manner for claiming the refunds and credits.

(b) Necessary funds from the collection of beer tax before it is allocated may be appropriated for the payment of beer tax refunds.

Sec. 203.08. PARTIAL TAX EXEMPTION FOR CERTAIN BEER. Beer produced in this state by a manufacturer whose annual production of beer in this state does not exceed 75,000 barrels is exempt from 25 percent of the tax imposed under Section 203.01 of this code.

Sec. 203.09. STATEMENTS. (a) The commission may require manufacturers of beer manufactured in this state or imported into this state, importers, and distributors to provide information as to purchases, sales, and shipments to enable the commission to collect the full amount of beer tax due.

No manufacturer, importer, or distributor may fail or refuse to furnish the information.

(b) The commission may seize or withhold from sale the manufacturer's, importer's, or distributor's beer for failure or refusal to supply the information required under Subsection (a) of this section or to permit the commission to make an investigation of pertinent records whether inside or outside this state.

Sec. 203.10. PAYMENT OF TAXES; DISCOUNT. The tax on beer shall be paid by a remittance payable to the comptroller and forwarded with any required sworn statements of taxes due to the commission in Austin on or before the due date. A discount of two percent of the amount due shall be withheld by the permittee or licensee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

Sec. 203.11. EVIDENCE IN SUIT. In a suit brought to enforce the collection of tax due on beer manufactured in or imported into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

- (1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

- (2) compliance by the commission with the provisions of this code in relation to the computation and levy of the tax.

Sec. 203.12. TAX LIABILITY. A person possessing beer on which the tax is delinquent is liable for the delinquent taxes in addition to the criminal penalties.

Sec. 203.13. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the license of a licensee who fails to file a report or return or to make a tax payment required by this subchapter. Chapter 2001, Government Code does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice shall be given to the licensee or the licensee's agent or employee by registered or certified mail if not given in person.

(c) The commission shall terminate a suspension made under this section when the licensee files all required returns and makes all required tax payments that are due.

CHAPTER 204. BONDS

Sec. 204.01. BOND REQUIRED. (a) Except as otherwise provided in this section, the following licensees and permittees shall furnish a bond:

- (1) those authorized to import alcoholic beverages into the state;
- (2) manufacturers of beer and brewers of ale or malt liquor in the state; and
- (3) all other permittees.

(b) No bond is required of a holder of a mixed beverage, private club registration, carriers, local cartage, wine and beer retailers, nonresident seller's, manufacturer's agent's, or agent's permit.

(c) No bond is required of a retail licensee or permittee who is not responsible for the primary payment of an alcoholic beverage excise tax to this state.

(d) The holder of a wholesaler's or class B wholesaler's permit, or the holder of a distributor's license may furnish, in lieu of all or part of the amount of the bond required:

(1) one or more certificates of deposit or savings assigned to the state, issued by one or more banks or savings institutions authorized to do business in this state; or

(2) one or more letters of credit issued by one or more banks or savings institutions authorized to do business in this state.

(e) If certificates of deposit or savings or letters of credit are furnished under Subsection (d) of this section, the administrator shall keep them in his possession. Interest earned on a certificate of deposit or savings is not subject to the assignment and remains the property of the owner of the certificate.

(f) The holder of a wholesaler's or class B wholesaler's permit, the holder of a winery or wine bottler's permit, or the holder of a distributor's license is not required to furnish a bond if for the preceding 36 months the permittee or licensee has paid all taxes and fees required by this code on or before the due date.

(g) An exemption under Subsection (f) of this section terminates and the permittee or licensee must furnish a bond or tax security if the permittee or licensee fails to pay a tax or fee imposed by this code on or before the due date.

(h) A permittee or licensee required to furnish a bond or tax security under Subsection (g) of this section is again entitled to exemption from the surety requirement if the permittee or licensee:

(1) pays all delinquent taxes and fees and any applicable penalties; and

(2) pays all taxes and fees required by this code on or before the due date for 18 consecutive months after the month in which the delinquent taxes and fees and the penalties are paid.

(i) A permittee or licensee who qualifies for an exemption under Subsection (f) of this section is also exempt from the bonding requirement for any other wholesaler's permit, class B wholesaler's permit, winery permit, wine bottler's permit, or distributor's license currently held by or subsequently issued to the same permittee or licensee for use at licensed premises different from and additional to those covered by the permit or license under which the permittee or licensee qualified for exemption. However, if a permittee or licensee fails to pay a tax or fee imposed by this code on or before the due date and the permittee or licensee holds multiple permits or licenses, the requirements for a bond or tax security shall be imposed or reimposed under Subsection (g) of this section only on the permit or license covering the licensed premises for which the tax or fee and any applicable penalty were not timely paid.

Sec. 204.02. FORM AND CONDITIONS. (a) A bond required under this chapter must be executed with the permittee or licensee as principal, a qualified surety company doing business in this state as surety, and the state as payee. All bonds of permittees must be payable in Travis County.

(b) The bond must be conditioned as required by the commission. Bonds required of permittees must be conditioned that as long as the applicant holds the permit he will not violate any law of this state relating to the traffic in or transportation, sale, or delivery of liquor or any valid rule of the commission. The bonds of permittees who are required to account for taxes and fees must also be conditioned that the permittee will account for and pay all permit fees and taxes levied by this code.

(c) The form of all bonds must be approved by the attorney general.

Sec. 204.03. AMOUNT OF BOND. (a) The commission or administrator shall set the amount of all bonds required under this chapter.

(c) Bonds of other permittees, except those permittees covered by Subsection (d) of this section, may not be set at an amount less than \$1,000 or more than \$25,000.

(d) Bonds, letters of credit, or certificates of deposit to insure the payment of the tax on distilled spirits imposed by Section 201.03 of this code, the tax on vinous liquor imposed by Section 201.04 of this code, the tax on ale and malt liquor imposed by Section 201.42 of this code, or the tax on beer imposed by Section 203.01 of this code, shall be set at an amount that will protect the state against the anticipated tax liability of the principal for any six-week period.

Sec. 204.04. MULTIPLE PERMITS, ONE BOND. If another permit is required, incidental to the operation of a business for which a basic permit is procured, the commission may accept one bond to support all of the permits. The commission shall determine the amount of the bond.

Sec. 204.05. CANCELLATION OF BOND. The commission may not cancel a surety bond until the surety company has paid and discharged in full all of its liabilities on the bond to the state as of the date of cancellation.

Sec. 204.06. COMPREHENSIVE WINERY BOND. A person who holds both a winery permit and a wine bottler's permit may execute a single bond in an amount determined by the commission instead of multiple bonds to secure the performance of different activities by the holder.

Sec. 204.07. WAIVER OF BOND REQUIREMENT. The commission may waive the requirement that a licensee or permittee furnish a bond under this chapter if the commission by rule determines the submission of the bond is no longer necessary.

CHAPTER 205. REVENUE ALLOCATION

Sec. 205.02. DISPOSITION OF RECEIPTS. (a) After allocation of funds to defray administrative expenses as provided in the current departmental appropriations act, receipts from the sale of tax stamps and funds derived from taxes on distilled spirits, wine, beer, and ale and malt liquor shall be deposited in the general revenue fund. An amount equal to 5/24th of the net revenue shall be transferred to the available school fund, an amount equal to 1/24th of the net revenue shall be transferred to the foundation school fund, and an amount equal to three-fourths of the net revenue shall be credited to the general revenue fund.

(b) All revenues derived from the collection of permit or license fees provided for in this code, except fees for temporary licenses, shall be deposited to the credit of the general revenue fund.

Sec. 205.03. EXCEPTION FOR CERTAIN WINE-RELATED REVENUE. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) Notwithstanding Section 205.02, the following revenue may be appropriated for each state fiscal year only as specified by this section:

(1) the lesser of:

(A) the amount, if any, by which the amount of revenue derived from excise taxes on wine produced in a state other than Texas and any sales taxes collected from

holders of out-of-state winery direct shipper's permits as a result of the passage of Senate Bill No. 877 by the 79th Legislature, Regular Session, 2005, according to the most recent projection, as of the beginning of the fiscal year, by the comptroller for the fiscal year exceeds the amount of revenue from those sources for fiscal year 2004, compounded annually for fiscal years 2005-2015 by the average percentage by which revenue from those sources increased from one fiscal year to the next between September 1, 1999, and August 31, 2003; or

(B) \$1 million; and

(2) the lesser of:

(A) the amount, if any, by which revenue derived from excise taxes on wine produced in this state and sales taxes remitted by holders of winery permits in this state, according to the most recent projection, as of the beginning of the fiscal year, by the comptroller for the fiscal year exceeds the amount of revenue from those sources for fiscal year 2004, compounded annually for fiscal years 2005-2015 by the average percentage by which revenue from those sources increased from one fiscal year to the next between September 1, 1999, and August 31, 2003; or

(B) \$1 million.

(c) Out of the amounts available under Subsections (b)(1) and (2) for a fiscal year, the lesser of \$50,000 or the total amount available under those subdivisions may be appropriated only to the Texas Cooperative Extension for extension viticulture operations.

(d) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds \$50,000, the lesser of \$50,000 or the total amount available under those subdivisions may be appropriated only to the Texas Agricultural Experiment Station for viticulture research.

(e) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds \$100,000, the lesser of the amount remaining under Subsection (b)(2) or \$65,000 may be appropriated only to the Texas Wine Marketing Research Institute at Texas Tech University.

(f) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amounts that may be appropriated under Subsections (c), (d), and (e), the lesser of the amount remaining under Subsections (b)(1) and (2) or \$280,000 may be appropriated only to the Department of Agriculture for distribution as provided by Subsections (g), (h), and (i).

(g) Except as provided by Subsections (h) and (i), money appropriated to the Department of Agriculture under Subsection (f) may be distributed only as follows:

(1) the lesser of the total amount appropriated to the department under Subsection (f) or \$50,000 shall be distributed to an appropriate institution of higher education to fund a new part-time extension faculty position in enology;

(2) if the amount appropriated under Subsection (f) exceeds \$50,000, the lesser of the remaining amount or \$50,000 shall be distributed to an appropriate institution of higher education for extension enology operations;

(3) if the amount appropriated under Subsection (f) exceeds \$100,000, the lesser of the remaining amount or \$50,000 shall be distributed to the institution of higher education designated under Subdivision (1) to fund a new part-time faculty position in enology research;

(4) if the amount appropriated under Subsection (f) exceeds \$150,000, the lesser of the remaining amount or \$50,000 shall be distributed to an appropriate institution of higher education to fund enology research program operations;

(5) if the amount appropriated under Subsection (f) exceeds \$200,000, the lesser of the remaining amount or \$30,000 shall be distributed to an appropriate institution of higher education for technical support personnel for enology research; and

(6) if the amount appropriated under Subsection (f) exceeds \$230,000, the lesser of the remaining amount or \$50,000 shall be distributed to an appropriate institution of higher education to fund two graduate internships in enology.

(h) If the maximum amount that may be distributed for a purpose provided by Subsection (g) is not available and the commissioner of agriculture determines that the amount available for that purpose is insufficient to achieve that purpose, the commissioner of agriculture may deposit the lesser amount into the wine industry development fund to be used for a purpose described by Subsection (l).

(i) Money appropriated under Subsection (f) derived from Subsection (b)(1) may be used only for a purpose described by Subsection (m).

(j) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amount that may be appropriated under Subsections (c)-(g), the lesser of the amount remaining under Subsections (b)(1) and (2) or \$50,000 may be appropriated only for distribution to the T. V. Munson Viticulture and Enology Center at Grayson Community College to fund the associate degree program at the center.

(k) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amount that may be appropriated under Subsections (c)-(j):

(1) the lesser of the amount remaining under Subsection (b)(2) or \$250,000 may be appropriated only to the commission; and

(2) the commission shall reduce the amount of the surcharge imposed during the following fiscal year under Section 5.55, as added by Chapter 101, Acts of the 78th Legislature, Regular Session, 2003, on permit and license holders who are not authorized to sell wine by an amount that will reduce the total amount collected under that section by the amount appropriated to the commission under Subdivision (1).

(l) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amounts that may be appropriated under Subsections (c)-(k), the remaining amount shall be deposited in the general revenue fund to the credit of the wine industry development fund and may be appropriated only to the Department of Agriculture. Money appropriated under this subsection may be used only for the purpose of providing funding to public or private entities to conduct surveys, research, and other projects related to a purpose described by Subsection (m) or (n).

(m) Revenue derived under Subsection (b)(1) and not otherwise appropriated under Subsections (c)-(k) may be appropriated only for the purpose of:

(1) developing viticulture-related and enology-related education programs;

(2) eliminating and eradicating Pierce's disease, the glassy-winged sharpshooter, and other diseases and pests that negatively impact the production of grapes and wine in the United States; or

(3) developing technologies, strategies, or practices that could benefit the production of grapes and wine in the United States.

(n) Revenue derived under Subsection (b)(2) and not otherwise appropriated under Subsections (c)-(k) may be appropriated only for the purposes of increasing the economic impact of the Texas wine producing industry on the state.

(o) The comptroller shall provide the Department of Agriculture information necessary to allow the department to identify the amount of revenue appropriated to the department that is derived under Subsection (b)(1) and the amount of that revenue that is derived under Subsection (b)(2) so that the department may distribute the revenue in accordance with this section.

(p) This section expires September 1, 2015.

CHAPTER 206. PROVISIONS GENERALLY APPLICABLE TO TAXATION

Sec. 206.01. RECORDS. (a) A permittee who distills, rectifies, manufactures, or receives any liquor shall make and keep a record of each day's production or receipt of liquor and

the amount of tax stamps purchased by the permittee. A permittee other than a retailer shall make and keep a record of each sale of liquor and to whom the sale is made. Each transaction shall be entered on the day it occurs. Permittees shall make and keep any other records required by the commission. All required records shall be kept available for inspection by the commission or its authorized representatives for at least four years. All required records may be retained in electronic or microfiche formats and may be retained on or off the premises of the permittee, consistent with the requirements of this section.

(b) No person may fail or refuse to make and retain for at least four years any record required by this section.

(c) No person may fail or refuse to keep any record required by this section open for inspection by the commission or its duly authorized representatives during reasonable office hours.

(d) No person may knowingly, with intent to defraud, make or cause to be made any false entry in any record required by this section or with like intent, alter or cause to be altered any item in one of those records.

Sec. 206.02. PROOF OF TAXES DUE. In a suit or claim by the attorney general for taxes due, he may attach or file as an exhibit a report or audit of a permittee or licensee with an affidavit made by the administrator or his representative stating that the taxes shown to be due by the report or audit are past due and unpaid and that all payments and credits have been allowed. Unless the opposing party files an answer in the same form and manner as required by Rule 185, Texas Rules of Civil Procedure, the audit or report constitutes prima facie evidence of the taxes due. The provisions of Rule 185 are applicable to a suit to collect taxes under this section.

Sec. 206.03. IMPORTATION WITHOUT TAX STAMP. A person commits an offense if he imports or transports liquor into this state without the proper state tax stamps affixed to the containers if the liquor is consigned to, intended for delivery to, or being transported to a person or place inside this state unless the liquor is consigned to a holder of a permit authorizing the importation of liquor.

Sec. 206.04. JURISDICTION CEDED TO FEDERAL GOVERNMENT. (a) No person may transport or ship or cause to be transported or shipped any alcoholic beverage into any area in this state in which the state has ceded police jurisdiction to the federal government or any of its agencies unless the containers or packages holding those alcoholic beverages have a Texas tax stamp affixed if required by this code.

(b) Common carriers are not required to see that tax stamps are affixed.

Sec. 206.05. UNMUTILATED STAMPS. No person may possess, buy, sell, or offer to buy or sell any empty carton, case, package, keg, barrel, bottle, or any other kind of alcoholic beverage container on which the state tax stamps have not been mutilated or defaced.

Sec. 206.06. FORGERY OR COUNTERFEITING. (a) In this section, "counterfeit" or "forged" means printed, manufactured or made by, or under the direction of, or issued, sold, or circulated by a person not authorized to do so under the provisions of this code.

(b) No person may forge or counterfeit a stamp provided for in this code or print, engrave, make, issue, sell, circulate, or possess with intent to use, sell, circulate, or pass a forged or counterfeit stamp or place or cause to be placed any forged or counterfeit stamp on any container of alcoholic beverage.

(c) No person may print, engrave, make, issue, sell, or circulate with intent to defraud or knowingly possess a forged or counterfeit permit, license, official signature, certificate, evidence of tax payment, or other instrument.

(d) No person may possess a stamp or a part of a stamp, die, plate, device, machine, or other instrument used or designed for use for forging or counterfeiting any instrument named in Subsection (b) or (c) of this section.

(e) Conviction for an offense defined in this section may be had on the uncorroborated evidence of an accomplice. A court, officer, or tribunal having jurisdiction of an

offense defined in this section or any district or county attorney may subpoena any person and compel his attendance as a witness to testify as to the violation of any provision of this section. Any person so summoned and examined is immune from prosecution for the violation of any provision of this section about which he may testify.

(f) A person who violates any provision of this section commits a felony punishable by imprisonment in the [Texas Department of Criminal Justice \[penitentiary\]](#) for not less than 2 nor more than 20 years.

Sec. 206.07. PAYMENT OF TAX BY MAIL. (a) The payment of any tax imposed by this code is timely made if not later than the date on which payment is due the tax is mailed to the commission in an envelope with the proper address and postage and is received by the commission not later than the 10th day after the date on which it was due.

(b) A legible postmark made by the United States Postal Service is prima facie evidence of the date of mailing.

Sec. 206.08. COORDINATION OF AUDITS. (a) Before the commission makes a demand to a licensee or permittee for any taxes due, as established by an audit, the commission shall:

(1) hold an informal conference with the licensee or permittee to discuss the audit and the rights of the permittee or licensee to both an informal and formal appeal of the taxes due;

(2) review the audit in the commission headquarters with the office of quality control to ensure that the uniform application of audit standards has been applied in all aspects to the audit; and

(3) send a certified letter stating the amount of taxes owed by the licensee or permittee, the amount of the delinquency, and the proper procedure to appeal the decision.

(b) The commission shall annually update and review all audit manuals to ensure compliance with national audit standards and impartiality and provide audit training to auditors responsible for auditing tax accounts. The commission may expend funds necessary to ensure adequate training of commission auditors or trainers to provide the standardization of audits throughout the state.

Sec. 206.09. CONTESTS OF TAXABLE AMOUNTS OWED. (a) A licensee or permittee contesting the amount of taxes owed, after receiving a demand for payment of taxes due from the commission, is entitled to a hearing under Chapter 2001, Government Code.

(b) An appeal from a final order issued by the commission must be filed in Travis County.