

CHAPTER 5-03 BEER AND LIQUOR WHOLESALERS - TAXATION

5-03-01. State wholesale license required - Qualifications - Penalty - Exception.

Before any person engages in the sale at wholesale of beer or liquor in this state, that person shall first procure a license from only the state tax commissioner. The license must only allow sale to licensed retailers, licensed wholesalers, regular retail outlets on federal military reservations, and sale for export from a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse. No license may be issued unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. If the applicant is not a corporation, the applicant must be a citizen of the United States and a resident of this state and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a resident of this state, a citizen of the United States, and a person of good moral character, and the officers, directors, and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.
2. The state tax commissioner may require the applicant to set forth other information necessary to enable the state tax commissioner to determine if a license should be granted.
3. A person is not eligible for such a license unless that person has a warehouse and office in this state, in which is kept a complete set of records relative to that person's alcoholic beverage transactions in this state.
4. The applicant may not have any financial interest in any retail alcoholic beverage business.
5. The provisions of this section relating to warehousing do not apply to a wholesaler of beer located in an adjoining state that permits wholesalers licensed in North Dakota to deliver beer to retailers without warehousing in that state.

A lender who acquires an inventory of beer or liquor by reason of a foreclosure of a security interest in the inventory is exempt from the requirement to obtain a license before the sale of the inventory. The lender shall offer the inventory for sale first to the wholesaler. A lender who forecloses upon a security interest in beer inventory for which the lender has a security interest shall dispose of the beer inventory within ninety days of obtaining possession of the inventory. Any person distributing alcoholic beverages in this state without compliance with this title is guilty of a class B misdemeanor.

5-03-01.1. Conviction not bar to licensure - Exceptions.

Conviction of an offense shall not disqualify a person from licensure under this chapter unless the state tax commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a beer or liquor wholesaler, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

5-03-01.2. Brand registration - Penalty.

Repealed by S.L. 2005, ch. 73, § 5.

5-03-02. Fees.

The fee for an annual wholesale liquor license is one thousand dollars. The fee for an annual wholesale beer license is two hundred dollars. Fees must be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the state tax commissioner. When an application clearly indicates that the applicant does not desire to exercise the privileges granted by the license applied for until on or after the beginning of the quarterly period following the quarterly period in which the application is filed with the department, the fees must be reduced twenty-five percent for each full quarter of a year elapsing between the first day of the year for which the license is issued and the date indicated

on the application. A license may not be issued for any period for a fee less than one-half of the annual license fee.

5-03-03. Bond required.

Repealed by S.L. 1995, ch. 74, § 5.

5-03-04. Collection of taxes.

The taxes imposed by this chapter are payable as follows:

1. Except as provided in subsection 3, wholesalers shall pay the tax to the state tax commissioner on or before the fifteenth day of each month.
2. Liquor wholesalers shall make the payments based on the total gallonage sold the preceding calendar month. Beer wholesalers shall make the payments based on the total gallonage purchased from brewers the preceding calendar month. Microbrew pubs shall make payments based on the total gallonage sold onpremises during the preceding calendar month.
3. Sales of alcoholic beverages for export through a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse are excluded from the computation of the gallonage tax. If the alcoholic beverages are returned to this state from the federally bonded warehouse, the foreign trade zone, or the export bonded warehouse, the exemption no longer applies.
4. Upon satisfactory proof, a tax credit is allowed beer wholesalers for beer purchased, but which cannot be sold in this state. A tax credit is allowed wholesalers on bad accounts which are charged off for income tax purposes, but a pro rata tax is again payable on any accounts subsequently collected.
5. If any wholesaler makes an overpayment of taxes due, the state tax commissioner shall issue a credit applicable to future obligations or certify that amount to the office of management and budget for a refund.
6. Any remittance within one dollar of the correct amount due may be accepted by the state tax commissioner as the correct amount due.

5-03-05. Tax commissioner to adopt rules - Appeal.

The state tax commissioner, pursuant to chapter 28-32, shall adopt rules governing retailers, wholesalers, direct shippers, and manufacturers necessary to carry out the provisions of this title and to ensure efficient collection of beer and liquor taxes. All decisions of the state tax commissioner are subject to court review.

5-03-06. Examination by tax commissioner - Penalty for improper returns.

The state tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, domestic winery, domestic distillery, microbrew pub, direct shipper, or other person to determine if such person has fully complied with all statutes and rules pertaining to the person's business. If any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax a penalty of five percent of the total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay, except the first month after the return or tax became due. Any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state tax commissioner may forgive all or part of any penalty for good cause shown. The tax commissioner shall give notice of the determination to the person liable for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of the determination must be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever is later. If it is determined upon audit by the tax commissioner that the tax due was twenty-five percent or more above the amount reported on the return, notice of determination of tax due must be given not later than

six years after the last day on which the return was due or six years after the return was filed, whichever was later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return must be given not later than six years after the due date of the return, but if fraudulent information is given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation provided in this section for giving notice of the determination of tax due does not apply. If any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or attempted to be evaded and such manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper is also guilty of a class C felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a manufacturer after notice from the state tax commissioner that such manufacturer has failed to file required reports with the tax commissioner's office. Any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper may have its license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

5-03-06.1. Hearing on alleged violations - Denial of license.

On licenses that are renewable annually, the state tax commissioner may not revoke or suspend a license or deny a renewal prior to conducting a hearing in accordance with chapter 28-32.

5-03-07. Imposition of tax - Rate.

A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries, domestic distilleries, microbrew pubs, and direct shippers for the privilege of doing business in this state. The amount of this tax shall be determined by the gallonage according to the following schedule:

Beer in bulk containers - per wine gallon	\$.08 (.021 per liter)
Beer in bottles and cans - per wine gallon	.16 (.042 per liter)
Wine, including sparkling wine, containing less than 17% alcohol by volume - per wine gallon	.50 (.132 per liter)
Wine containing 17%-24% alcohol by volume - per wine gallon	.60 (.159 per liter)
Distilled spirits - per wine gallon	2.50 (.66 per liter)
Alcohol - per wine gallon	4.05 (1.07 per liter)

5-03-08. Taxes and fees deposited in the general fund.

All moneys collected by the tax commissioner under this chapter must be transferred to the state treasurer, within ten days after the end of the month in which they were collected, and deposited in the state general fund.

5-03-09. Supplier license required - Filing requirements - Penalty.

1. Before a supplier may engage in the sale or shipment of alcoholic beverages to a licensed North Dakota wholesaler, that supplier must first procure a supplier license from the state tax commissioner.
2. For any month in which a licensed supplier has made sales to a North Dakota wholesaler, that supplier shall file a report with the state tax commissioner no later than the last day of each calendar month covering alcoholic beverages sold or shipped to a North Dakota wholesaler during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in a format as prescribed by the state tax commissioner. The state tax commissioner may require that

the report be submitted in an electronic format approved by the state tax commissioner.

3. If a supplier fails to file the required report as required by this section, there is imposed a penalty of twenty-five dollars per month for each calendar month or fraction of a month during which the delinquency continues beginning with the month during which the report was due.
4. A supplier in violation of this section or who furnishes information required by this section that is false or misleading is guilty of a class A misdemeanor.
5. In addition, whenever the holder of a supplier's license fails to comply with any of the provisions of this title or any rules or regulations prescribed by the state tax commissioner and adopted under this title, the state tax commissioner, upon hearing after giving ten days' notice of the time and place of the hearing to show cause why the holder's license should not be revoked, may revoke the license. The state tax commissioner also shall have the power to restore licenses after such revocation. Whenever the holder of a license has had the license revoked for failure to comply with the provisions of this title or any rules and regulations prescribed by the state tax commissioner and adopted under this title, the state tax commissioner shall charge a fee of one hundred dollars for the reissuance of the license.