Chapter 473

2003 EDITION

Wine, Cider and Malt Beverage Privilege Tax

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473.005 Definitions for chapter. The definitions provided by ORS 471.001 apply to this chapter. [1995 c.301 §6]

473.010 [Amended by 1953 c.120 §6; 1974 c.4 §8; repealed by 1995 c.301 §33]

473.015 Definition of "cider." For the purposes of this chapter, "cider" means an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not less than one-half of one percent and not more than seven percent of alcohol by volume, including, but not limited to, flavored, sparkling or carbonated cider. [1995 c.301 §10; 1997 c.348 §1; 1999 c.351 §78]

473.020 Administration of chapter by commission. The Oregon Liquor Control 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 wines and malt beverages. (1) A tax 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 is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of wines 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, a manufacturer or an importing distributor of wines containing more than 14 percent alcohol by volume shall be taxed at the rate of 10 cents per gallon.

(4) In addition to the taxes imposed by subsections (2) and (3) of this section, a manufacturer or an importing distributor of wines shall be taxed at the rate of two cents per gallon. Notwithstanding any other provision of law, all moneys collected by the Oregon Liquor Control Commission pursuant to this subsection shall be paid into the account established by the Oregon Wine Board under ORS 182.470.

(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 wine or malt beverages produced, purchased or received by any manufacturer. If the wine or malt 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 the wine or malt 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 c.4 §9; 1975 c.424 §3; 1977 c.856 §19; 1983 c.651 §9; 1987 c.608 §3; 1995 c.301 §23; 1997 c.249 §176; 1999 c.351 §79; 2003 c.797 §22]

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

(2) Notwithstanding subsection (1) of this section or any other provision of law, the taxation of the manufacturing or distribution of cider shall be at a rate that is not less than the rate imposed for the privilege of manufacturing or distributing malt beverages under ORS 473.030 (1).

(3) The rate of tax imposed by this section shall apply proportionately to quantities in containers of less capacity than those quantities specified in this section.

(4) The tax imposed by this section shall be measured by the volume of cider produced, purchased or received by any manufacturer. If the cider 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 the cider 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. [1997 c.348 §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, cider 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, cider or wine manufactured in this state and imported into or sold in such state, than are imposed upon beer, malt liquor, cider and wine manufactured in such state; or

(c) Impose any higher fee for the privilege of selling or handling beer, malt liquor, cider 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 Oregon Liquor Control Commission shall levy and collect similar taxes, fees and charges from licensees or persons selling in Oregon, beer, malt liquor, cider 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. [Amended by 1997 c.348 §4]

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 products imported for use in a winery licensed under ORS chapter 471 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, 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, the seller shall report all sales on forms provided by the Oregon Liquor Control Commission and pay $12.50 per ton as a tax directly to the commission.

(6) Taxes paid by sellers under subsection (5) of this section shall be collected by the Oregon Liquor Control Commission on behalf of the Oregon Wine Board. The commission may retain an amount sufficient to cover the cost of collecting the taxes paid under subsection (5) of this section and shall transfer the remainder of those taxes to the board for deposit as provided in ORS 576.775. Failure to pay a tax imposed under subsection (5) of this section subjects the violator to the penalty provided in ORS 473.992.

(7) 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.

(8) The taxes imposed by this section shall be paid by the licensed winery and collected by the commission subject to the same powers as taxes imposed and collected under ORS chapter 473. 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; 1995 c.301 §47; 2003 c.604 §101; 2003 c.797 §23]

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.

473.047 Marketing activity tax credit; rules. (1) As used in this section, "qualified marketing activity" means marketing activity:

(a) That promotes the sale of wine or wine products;

(b) That does not promote specific brands of wine or wine products or exclusively promote the products of any particular winery; and

(c) That has been approved by the Oregon Wine Board.

(2) A credit against the privilege tax otherwise due under ORS 473.030 (2) is allowed to a manufacturer or importing distributor of wine for the qualified marketing activity expenditures made by the manufacturer or importing distributor in the calendar year prior to the year for which the credit is claimed.

(3) The credit allowed under this section shall be 28 percent of the sum of the following:

(a) One hundred percent of the cost of qualified marketing activity to the extent that the cost of the activity does not exceed the amount of taxes the manufacturer or importing distributor of wine owed under ORS 473.030 (2) on the first 40,000 gallons, or 151,000 liters, of wine sold annually in Oregon; and

(b) Twenty-five percent of the tax owed under ORS 473.030 (2) for qualified marketing activity on wine sales above 40,000 gallons, or 151,000 liters, of wine sold annually in Oregon.

(4) The credit allowed under this section may not exceed the tax liability of the manufacturer or importing distributor of wine under ORS 473.030 (2) for the calendar year following the year in which qualified marketing activity occurred.

(5) A manufacturer or importing distributor of wine that wishes to claim the credit allowed under this section shall submit with the manufacturer's or importing distributor's tax return form a certificate issued by the board verifying that the marketing activity was a qualified marketing activity. The credit shall be claimed on the form and include the information required by the Oregon Liquor Control Commission by rule.

(6) The credit shall be claimed against the taxes reported on the return filed under ORS 473.060 for each month in the calendar year following the year in which the qualified marketing activity occurred, until the credit is completely used or the year ends, whichever occurs first.

(7) The board shall by rule further define, consistent with the definition in subsection (1) of this section, the marketing activities that constitute qualified marketing activity. [2001 c.971 §2; 2003 c.797 §24]

473.050 When privilege tax not imposed. In computing any privilege tax imposed by ORS 473.030, 473.035 or 473.040:

(1) No malt beverage, cider or wine is subject to tax more than once.

(2) No tax shall be levied, collected or imposed upon any malt beverage, cider or wine sold to the Oregon Liquor Control 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, cider or wine determined by the commission to be unfit for human consumption or unsalable.

(5) No tax shall be levied, collected or imposed upon the first 40,000 gallons, or 151,000 liters, of wine sold annually in Oregon from a United States manufacturer of wines 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; 1995 c.301 §24; 1997 c.348 §5]

473.057 Reciprocal waiver of tax on wine or cider authorized. No tax, fee or other charge shall be imposed on wine or cider sent into this state from another state pursuant to ORS 471.229 if the state from which the wine or cider is sent does not impose a tax, fee or charge on wine or cider from this state sent into the other state in the manner described in ORS 471.229. [1989 c.511 §4; 2003 c.44 §4]

473.060 Payment of taxes; refunds; interest or penalty; appeal. (1) The privilege taxes imposed by ORS 473.030, 473.035 and 473.040 shall be paid to the Oregon Liquor Control 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 wines, on or before the 20th day of the month after such wines 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 wine, cider or malt beverages 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 unsalable.

(2) The commission may waive any interest or penalty assessed to a manufacturer subject to the tax imposed under ORS 473.030, 473.035 or 473.040 if the commission, in its discretion, determines that the manufacturer has made a good faith attempt to comply with the requirements of this chapter.

(3) Except in the case of fraud, the commission may not assess any interest or penalty on any tax due under ORS 473.030, 473.035 or 473.040 following the expiration of 36 months from the date on which was filed the statement required under ORS 473.070 reporting the quantity of wine, cider or malt beverages upon which the tax is due.

(4) A manufacturer may appeal a tax imposed under ORS 473.030, 473.035 or 473.040 in the manner of a contested case under ORS chapter 183. [Amended by 1955 c.241 §1; 1971 c.158 §2; 1981 c.199 §5; 1995 c.301 §25; 1997 c.348 §6; 1999 c.145 §1]

473.070 Statements by manufacturers as to quantities produced. On or before the 20th day of each month, every manufacturer shall render to the Oregon Liquor Control Commission a statement of the quantity of wine, cider 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; 1995 c.301 §26; 1997 c.348 §7]

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 Oregon Liquor Control Commission shall estimate the amount of wine, cider and malt beverages produced, purchased or received by the man-

ufacturer and assess the privilege tax thereon. The manufacturer shall be estopped from complaining of the amount so estimated. [Amended by 1967 c.52 §2; 1995 c.301 §27; 1997 c.348 §8]

473.090 Lien created by the tax. The privilege tax required to be paid by ORS 473.030, 473.035 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. [Amended by 1997 c.348 §9]

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, 473.035 and 473.040, the Oregon Liquor Control 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. [Amended by 1997 c.348 §10]

473.110 Sale of property; disposal of proceeds. At the sale, the property shall be sold by the Oregon Liquor Control 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 Collection of sums due state; remedies cumulative. (1) The Oregon Liquor Control 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, reducing 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 Oregon Liquor Control 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 wine, cider 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 Oregon Liquor Control Commission may prescribe. The commission, by rule or regulation, may require the delivery of statements by distributors to purchasers, with wine, cider 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. [Amended by 1995 c.301 §28; 1997 c.348 §11]

473.150 Inspection of manufacturer's records; records to be kept for prescribed period. (1) The Oregon Liquor Control Commission may, at any time, examine the books and records of any manufacturer of wine, cider or malt beverages, 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. [Amended by 1995 c.301 §29; 1997 c.348 §14]

473.160 Records to be kept by persons transporting wine, cider or malt beverage. Every person transporting wine, cider or malt beverages within this state, whether such transportation originates within or without this state, shall keep a true and accurate record of wine, cider or malt beverages transported. The record shall include ingredients which may be used in the manufacture, production, brewing or fermentation of the wine, cider or malt beverages, showing such facts with relation to those beverages, their ingredients and their transportation, as the Oregon Liquor Control Commission may require. The 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 the records. [Amended by 1995 c.301 §30; 1997 c.348 §12]

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, 473.035 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 Oregon Liquor Control 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 the books for two years for inspection of the commission; or

(d) Alter, cancel or obliterate entries in the 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; 1997 c.348 §13]

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.

473.992 Penalty upon failure to pay agricultural products tax. Failure to pay a tax under ORS 473.045 (5) is punishable, upon conviction, by a fine of not more than $500, or by imprisonment in the county jail

for not more than 90 days, or both. [2003 c.797 §9]

Note: 473.992 was added to and made a part of 576.750 to 576.765 by legislative action but was not added to ORS chapter 473 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.