

HOUSE BILL NO. 84

INTRODUCED BY K. SULLIVAN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TAXATION AND REPORTING LAWS FOR WINE AND HARD CIDER; REVISING THE PROCESS FOR REGISTERED WINERIES WITH A DIRECT SHIPMENT ENDORSEMENT OR TABLE WINE DISTRIBUTORS TO PAY TAXES; PROVIDING FOR ELECTRONIC FILING OF RETURNS AND PAYMENT OF TAXES FOR WINERIES; AND AMENDING SECTIONS 16-1-411, 16-3-411, AND 16-4-1102, MCA; AND REPEALING SECTION 16-3-404, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine and hard cider -- penalty and interest. (1) (a) A tax of 27 cents per liter is imposed on sacramental wine and table wine, except hard cider, imported by a table wine distributor or the department and on table wine shipped directly by a winery with a direct shipment endorsement TO CONSUMERS OR LICENSED RETAILERS BY A WINERY REGISTERED OR LICENSED PURSUANT TO 16-4-107.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department AND ON HARD CIDER SHIPPED DIRECTLY TO LICENSED RETAILERS BY A WINERY LICENSED PURSUANT TO 16-4-107.

(2) The tax imposed in subsection (1) must be paid as follows:

(a) a winery with a direct shipment endorsement or a table wine distributor A WINERY REGISTERED PURSUANT TO 16-4-107 that sells more than 1,000 liters of sacramental wine, table wine, or hard cider, in any combination, TO CONSUMERS in the state during a period beginning October 1 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or before the 15th day of each month during the following period that begins October 1 and ends September 30.

(b) a winery with a direct shipment endorsement or a table wine distributor A WINERY REGISTERED PURSUANT TO 16-4-107 that sells 1,000 liters or less of sacramental wine, table wine, or hard cider, in any combination, TO CONSUMERS in the state during a period beginning October 1 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on or before October 15 of

1 ~~the following period that begins October 1 and ends September 30, by the winery with a direct shipment~~
 2 ~~endorsement or a table wine distributor by the 15th day of the month following shipment by the winery with the~~
 3 ~~direct shipment endorsement or sale of the sacramental wine, table wine, or hard cider from the table wine~~
 4 ~~distributor's warehouse.~~

5 (C) A WINERY LICENSED PURSUANT TO 16-4-107 THAT SELLS SACRAMENTAL WINE, TABLE WINE, OR HARD CIDER
 6 TO CONSUMERS OR LICENSED RETAILERS IN THE STATE SHALL ELECTRONICALLY FILE A WINE TAX RETURN OR A HARD
 7 CIDER TAX RETURN, OR BOTH, AND PAY THE TAX ON A MONTHLY BASIS ON OR BEFORE THE 15TH OF EACH MONTH FOR
 8 SALES IN THE PREVIOUS MONTH.

9 (D) A TABLE WINE DISTRIBUTOR THAT SELLS SACRAMENTAL WINE, TABLE WINE, OR HARD CIDER IN THE STATE
 10 SHALL ELECTRONICALLY FILE A WINE TAX RETURN OR A HARD CIDER TAX RETURN, OR BOTH, AND PAY THE TAX ON A
 11 MONTHLY BASIS ON OR BEFORE THE 15TH DAY OF EACH MONTH FOR SALES IN THE PREVIOUS MONTH.

12 (3) Failure to electronically file a tax return or failure to pay the tax required by this section subjects the
 13 ~~winery with the direct shipment endorsement~~ or the table wine distributor to the penalties and interest provided
 14 for in 15-1-216.

15 ~~(3)(4)~~ The tax paid by a winery ~~with a direct shipment endorsement~~ or by a table wine distributor in
 16 accordance with subsection (2) must, in accordance with the provisions of 17-2-124, be distributed as follows:

- 17 (a) 69% to the state general fund; and
 18 (b) 31% to the state special revenue fund to the credit of the department of public health and human
 19 services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

20 ~~(4)(5)~~ The tax computed and paid in accordance with this section is the only tax imposed by the state
 21 or any of its subdivisions, including cities and towns.

22 ~~(5)(6)~~ For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not
 23 include hard cider."
 24

25 **Section 2.** Section 16-3-411, MCA, is amended to read:

26 **"16-3-411. Winery.** (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

- 27 (a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;
 28 (b) sell wine it produces at wholesale to wine distributors;
 29 (c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the
 30 premises;

- 1 (d) provide, without charge, wine it produces for consumption at the winery;
- 2 (e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it
3 produces;
- 4 (f) obtain a special event permit under 16-4-301;
- 5 (g) perform those operations and cellar treatments that are permitted for bonded winery premises under
6 applicable regulations of the United States department of the treasury;
- 7 (h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of the
8 license; or
- 9 (i) obtain a direct shipment endorsement to ship table wine as provided in Title 16, chapter 4, part 11,
10 directly to an individual in Montana who is at least 21 years of age.
- 11 (2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly
12 to licensed retailers if the winery:
- 13 (i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered
14 pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;
- 15 (ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer; or
16 (iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer and:
- 17 (A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery or
18 bonded warehouse;
- 19 (B) individual shipments delivered by common carrier are limited to three cases a day for each licensed
20 retailer; and
- 21 (C) the shipments delivered by common carrier do not exceed 4,500 cases a year.
- 22 ~~(b) A winery making sales to retail licensees under the provisions of this subsection (2) is considered~~
23 ~~a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411.~~
- 24 ~~(e)~~(B) If a winery uses a common carrier for delivery of the wine to licensed table wine distributors and
25 retailers, the shipment must be:
- 26 (i) in boxes that are marked with the words: "Wine Shipment From Montana-Licensed Winery to Montana
27 Licensee";
- 28 (ii) delivered to the premises of a licensed table wine distributor or licensed retailer who is in good
29 standing; and
- 30 (iii) signed for by the wine distributor or retailer or its employee or agent.

1 ~~(d)~~(c) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine
 2 within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall, ~~on~~
 3 ~~or before the 15th day of each month,~~ pursuant to 16-1-411, electronically file a report in the manner and form
 4 prescribed by the department, ~~make a return~~ reporting the amount of wine or hard cider, or both, that it shipped
 5 in the state during the preceding ~~month~~ period, including the names and addresses of consignees or retailers,
 6 and other information that the department may determine to be necessary to ensure that distribution of ~~table~~
 7 ~~wines~~ wine or hard cider, or both, within this state conforms to the requirements of this code."

8

9 **Section 3.** Section 16-4-1102, MCA, is amended to read:

10 **"16-4-1102. Requirements for direct shipment endorsements -- fee -- labeling -- taxes --**
 11 **recordkeeping.** (1) A winery licensed or registered under 16-4-107 shall before shipping table wine directly to
 12 an individual in Montana:

13 (a) remit an annual direct shipment endorsement fee of \$50;

14 (b) submit to the department a written statement acknowledging that the winery will contract only with
 15 common carriers that agree that any delivery of table wine will be made only to an individual in Montana who is
 16 at least 21 years of age and who signs a form acknowledging receipt of the table wine; and

17 (c) receive from the department a direct shipment endorsement.

18 (2) A shipment of table wine under this part must be conspicuously labeled with the words "Contains
 19 Alcohol: Signature of Person Age 21 or Older Required for Delivery".

20 (3) (a) In addition to maintaining records required under 16-3-411 or 16-4-107, a winery with a direct
 21 shipment endorsement shall maintain records of any sales or shipments to an individual in Montana.

22 (b) The winery shall, ~~by the 15th day of each month following a month in which a shipment was made,~~
 23 ~~report to the department in the manner and form prescribed by the department information on direct shipments~~
 24 ~~in the preceding month~~ electronically file a wine tax return and pay the tax required under 16-1-411~~(1)~~(a). The
 25 information reported to the department must include the names and addresses of the individual to whom the table
 26 wine was shipped and any other information that the department determines is necessary to verify that direct
 27 shipment of table wine conforms to the requirements of Title 16. Failure to pay taxes or file the information
 28 required in this subsection (3)(b) subjects the winery holding the direct shipment endorsement to the penalties
 29 and interest provided for in 15-1-216.

30 (4) A winery with a direct shipment endorsement shall allow the department to perform an audit of the

1 record of shipments made under 16-4-1101. The shipment records must be retained for 3 years.

2 (5) If a winery with a direct shipment endorsement uses a bonded wine warehouse to fill table wine
3 orders shipped to an individual in Montana, the winery shall provide written notice to the department of the name
4 and the address of the bonded wine warehouse. The winery is responsible for compliance with this part."

5
6 ~~NEW SECTION. Section 4. Repealer. The following section of the Montana Code Annotated is~~
7 ~~repealed:~~

8 ~~16-3-404. Monthly report of table wine distributor and retailer.~~

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