

B. sell or deliver to any person alternative fuel from any alternative fuel supply tank or auxiliary alternative fuel supply tank;

C. deliver alternative fuel from a cargo tank into the alternative fuel supply tank of a motor vehicle; provided, however, delivery of liquefied alternative fuels may be made into the alternative fuel supply tank of a motor vehicle by a registered and licensed alternative fuel distributor when made by that distributor from the cargo tank of a vehicle operated by that distributor, which tank is specially designed to make this type of alternative fuel delivery; or

D. engage in the business of distributing alternative fuel in New Mexico without obtaining an alternative fuel distributor license under the provisions of Section 8 [7-16B-8 NMSA 1978] of the Alternative Fuel Tax Act.

**History:** Laws 1995, ch. 16, § 9.

### **ANNOTATIONS**

**Effective dates.** — Laws 1995, ch. 16, § 17 made Laws 1995, ch. 16, § 9 effective January 1, 1996.

## **7-16B-10. Administration and enforcement of act.**

The department shall interpret the provisions of the Alternative Fuel Tax Act. The department shall administer and enforce the collection of the alternative fuel excise tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

**History:** Laws 1995, ch. 16, § 10.

### **ANNOTATIONS**

**Effective dates.** — Laws 1995, ch. 16, § 17 made Laws 1995, ch. 16, § 10 effective January 1, 1996.

## **ARTICLE 17**

### **Liquor Excise Tax**

#### **7-17-1. Short title.**

Chapter 7, Article 17 NMSA 1978 may be cited as the "Liquor Excise Tax Act".

**History:** 1953 Comp., § 46-7-15, enacted by Laws 1966, ch. 49, § 1; recompiled as 1953 Comp., § 72-32-1, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 1.

## ANNOTATIONS

**Cross references.** — For duty of successor in business, see 7-1-61 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 45 Am. Jur. 2d Intoxicating Liquors §§ 203 to 219.

48 C.J.S. Intoxicating Liquors §§ 199 to 212.

### 7-17-2. Definitions.

As used in the Liquor Excise Tax Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol by volume, but "alcoholic beverages" does not include medicinal bitters;

B. "beer" means an alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;

C. "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears that contains not less than one-half of one percent of alcohol by volume and not more than eight and one-half percent of alcohol by volume;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fortified wine" means wine containing more than fourteen percent alcohol by volume when bottled or packaged by the manufacturer, but "fortified wine" does not include:

- (1) wine that is sealed or capped by cork closure and aged two years or more;
- (2) wine that contains more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that has not been produced with the addition of wine spirits, brandy or alcohol; or
- (3) vermouth and sherry;

F. "microbrewer" means a person who produces less than two hundred thousand barrels of beer per year;

G. "person" includes, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department, institution or instrumentality thereof;

H. "small winegrower" means a winegrower who produces less than one million five hundred thousand liters of wine in a year;

I. "spirituous liquors" means alcoholic beverages, except fermented beverages such as wine, beer, cider and ale;

J. "wholesaler" means a person holding a license issued under Section 60-6A-1 NMSA 1978 or a person selling alcoholic beverages that were not purchased from a person holding a license issued under Section 60-6A-1 NMSA 1978;

K. "wine" means an alcoholic beverage other than cider that is obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, and that does not contain more than twenty-one percent alcohol by volume; and

L. "winegrower" means a person licensed pursuant to Section 60-6A-11 NMSA 1978.

**History:** 1953 Comp., § 46-7-16, enacted by Laws 1966, ch. 49, § 2; recompiled as 1953 Comp., § 72-32-2, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 2; 1986, ch. 20, § 74; 1991, ch. 161, § 1; 1993, ch. 65, § 6; 1994, ch. 52, § 1; 1995, ch. 70, § 18; 1995, ch. 74, § 1; 1996, ch. 49, § 1; 1997, ch. 143, § 1; 2000 (2nd S.S.), ch. 8, § 1; 2008, ch. 82, § 1; 2013, ch. 94, § 1; 2013, ch. 95, § 1; 2019, ch. 229, § 1.

## **ANNOTATIONS**

**The 2019 amendment**, effective July 1, 2019, revised the definitions of "cider" and "microbrewer" as used in the Liquor Excise Tax Act; in Subsection C, after "ripe apples", added "or pears", after "not more than", deleted "seven" and added "eight and one-half"; and in Subsection F, deleted former Paragraphs F(1) through F(3) and added "a person who produces less than two hundred thousand barrels of beer per year".

**2013 Amendments.** — Laws 2013, ch. 95, § 1, effective January 1, 2014, increased the volume limit for small wine growers; and in Subsection H, after "winegrower who produces", deleted "fewer than nine hundred fifty thousand" and added "less than one million five hundred thousand".

Laws 2013, ch. 94, § 1, effective January 1, 2014, deleted former Subsection F and added a new Subsection F.

**The 2008 amendment**, effective July 1, 2008, deleted the former definitions of "spirituous liquor", "fortified wine" and "wine"; in Subsection H, increased the maximum production of wine from five hundred sixty thousand liters to nine hundred fifty thousand liters; and added Subsections E, I, K and L.

**The 2000 amendment**, effective July 1, 2000, substituted "five hundred sixty thousand liters" for "three hundred seventy-five thousand liters" in Subsection E.

**The 1997 amendment**, effective July 1, 1997, made several stylistic changes throughout the section and substituted "three hundred seventy-five thousand" for "two hundred twenty thousand" in Subsection E.

**The 1996 amendment**, effective July 1, 1996, inserted "cider" in Paragraph A(1), added Paragraph A(3) and redesignated the following paragraphs accordingly, and inserted "other than cider" near the beginning of Paragraph A(5).

**The 1995 amendment**, effective July 1, 1995, deleted former Subsection B, redesignated the remaining sections appropriately, and deleted "'director' or 'division'" following "'department'" in Subsection B.

**The 1994 amendment**, effective July 1, 1994, in Paragraph A(3), substituted "and aged two years of more" for "aged two years or more and sold only in 750 milliliter bottles or" in Subparagraph (a) and "or" for "and" at the end of Subparagraph (b), and added Subparagraph (c).

**The 1993 amendment**, effective July 1, 1993, in Subsection A, added Paragraph (3) and redesignated former Paragraph (3) as Paragraph (4); added Subsection D and redesignated former Subsections D through F as Subsections E through G; and deleted provisions in Subsection F, pertaining to persons designated as small domestic producers for purposes of Section 5041 of the Internal Revenue Code.

**The 1991 amendment**, effective July 1, 1987, added Subsection E; redesignated former Subsection E as Subsection F; and made minor stylistic changes in Subsections A and B.

### **7-17-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1982, ch. 111, § 2, repealed 7-17-3 NMSA 1978, relating to the imposition of a wholesaler's tax and the rate thereof.

Laws 1982, ch. 111, § 3, provided that § 2 of the act would become effective on the day when the supreme court found the tax credit provisions of 7-9-80.1 NMSA 1978 to be less than fully enforceable and effective.

Laws 1983, ch. 213, § 38, repealed 7-17-3 NMSA 1978, relating to the imposition and rate of the wholesalers tax, and Laws 1982, ch. 111, § 2, effective July 1, 1983.

## **7-17-4. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1984, ch. 85, § 12, repealed 7-17-4 NMSA 1978, as enacted by Laws 1966, ch. 49, § 4, and recompiled by Laws 1973, ch. 166, § 2, relating to presumption of taxability under the Liquor Control Act, effective July 1, 1984.

## **7-17-5. Imposition and rate of liquor excise tax.**

A. There is imposed on a wholesaler who sells alcoholic beverages on which the tax imposed by this section has not been paid an excise tax, to be referred to as the "liquor excise tax", at the following rates on alcoholic beverages sold:

- (1) on spirituous liquors, except as provided in Paragraph (9) of this subsection, one dollar sixty cents (\$1.60) per liter;
- (2) on beer, except as provided in Paragraph (5) of this subsection, forty-one cents (\$.41) per gallon;
- (3) on wine, except as provided in Paragraphs (4) and (6) of this subsection, forty-five cents (\$.45) per liter;
- (4) on fortified wine, one dollar fifty cents (\$1.50) per liter;
- (5) on beer manufactured or produced by a microbrewer and sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a microbrewer, eight cents (\$.08) per gallon on the first thirty thousand barrels sold, twenty-eight cents (\$.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels and forty-one cents (\$.41) per gallon for sixty thousand or more barrels sold;
- (6) on wine manufactured or produced by a small winegrower and sold in this state, provided that proof is furnished to the department that the wine was manufactured or produced by a small winegrower:
  - (a) ten cents (\$.10) per liter on the first eighty thousand liters sold;
  - (b) twenty cents (\$.20) per liter on each liter sold over eighty thousand liters but not over nine hundred fifty thousand liters; and
  - (c) thirty cents (\$.30) per liter on each liter sold over nine hundred fifty thousand liters but not over one million five hundred thousand liters;

(7) on cider, except as provided in Paragraph (8) of this subsection, forty-one cents (\$.41) per gallon;

(8) on cider manufactured or produced by a small winegrower and sold in this state, provided that proof is furnished to the department that the cider was manufactured or produced by a small winegrower, eight cents (\$.08) per gallon on the first thirty thousand barrels sold, twenty-eight cents (\$.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels and forty-one cents (\$.41) per gallon for sixty thousand or more barrels sold; and

(9) on spirituous liquors manufactured or produced by a craft distiller licensed pursuant to Section 60-6A-6.1 NMSA 1978, provided that proof is provided to the department that the spirituous liquors were manufactured or produced by a craft distiller, for products up to ten percent alcohol by volume, eight cents (\$.08) per liter for the first two hundred fifty thousand liters sold and twenty-eight cents (\$.28) per liter for the next two hundred fifty thousand liters sold and for products over ten percent alcohol by volume, thirty-two cents (\$.32) per liter on the first one hundred seventy-five thousand liters sold and sixty-five cents (\$.65) per liter on the next two hundred thousand liters sold.

B. The volume of wine transferred from one winegrower to another winegrower for processing, bottling or storage and subsequent return to the transferor shall be excluded pursuant to Section 7-17-6 NMSA 1978 from the taxable volume of wine of the transferee. Wine transferred from an initial winegrower to a second winegrower remains a tax liability of the transferor, provided that if the wine is transferred to the transferee for the transferee's use or for resale, the transferee then assumes the liability for the tax due pursuant to this section.

C. A transfer of wine from a winegrower to a wholesaler for distribution of the wine transfers the liability for payment of the liquor excise tax to the wholesaler upon the sale of the wine by the wholesaler.

**History:** 1978 Comp., § 7-17-5, enacted by Laws 1993, ch. 65, § 8; 1994, ch. 52, § 2; 1995, ch. 74, § 2; 1996, ch. 49, § 2; 1997, ch. 143, § 2; 2000, ch. 43, § 1; 2000 (2nd S.S.), ch. 8, § 2; 2008, ch. 82, § 2; 2013, ch. 94, § 2; 2013, ch. 95, § 2; 2019, ch. 229, § 2.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1993, ch. 65, § 8 repealed former 7-17-5 NMSA 1978, as amended by Laws 1993, ch. 65, § 7, and enacted a new section, effective July 1, 1994.

**The 2019 amendment,** effective July 1, 2019, revised the liquor excise tax rates on beer manufactured or produced by a microbrewer and sold in this state, and provided for a liquor excise tax on cider manufactured or produced by a small winegrower and

sold in this state and on spirituous liquors manufactured or produced by a craft distiller; in Subsection A, Paragraph A(1), after "liquors", added "except as provided in Paragraph (9) of this subsection", in Paragraph A(5), after "on the first", deleted "ten" and added "sixty", after "barrels sold over", deleted "ten" and added "thirty", after "but less than", deleted "fifteen" and added "sixty", and after "sixty thousand barrels", added "and forty-one cents (\$.41) per gallon for sixty thousand or more barrels sold", in Paragraph A(7), after "cider", added "except as provided in Paragraph (8) of this subsection", and added Paragraphs A(8) and A(9).

**2013 Amendments.** — Laws 2013, ch. 95, § 2, effective January 1, 2014, increased the liquor excise tax rate for small winegrowers; and added Subparagraph (c) of Paragraph (6) of Subsection A.

Laws 2013, ch. 94, § 2, effective January 1, 2014, added a new tax rate for all barrels sold over ten thousand barrels, but fewer than fifteen thousand barrels; and in Paragraph (5), Subsection A, added the language after "eight cents (\$.08) per gallon".

**The 2008 amendment,** effective July 1, 2008, increased the minimum production of wine from five hundred sixty thousand liters to nine hundred fifty thousand liters and added Subsections B and C.

**The 2000 (2nd S.S.) amendment,** effective July 1, 2000, substituted "five hundred sixty thousand liters" for "three hundred seventy-five thousand liters" at the end of Subsection F.

**The 2000 amendment,** effective July 1, 2000, in Subsection E, changed the excise tax on beer produced by a microbrewer from twenty-five cents per gallon to eight cents per gallon.

**The 1997 amendment,** effective July 1, 1997, substituted "three hundred seventy-five thousand" for "two hundred twenty thousand" in Subsection F.

**The 1996 amendment,** effective July 1, 1996, added Subsection G.

**The 1995 amendment,** effective June 16, 1995, deleted "or distributes" following "sells" and "or distributed" following "sold" in the introductory paragraph.

**The 1994 amendment,** effective July 1, 1994, substituted "one dollar sixty cents (\$1.60)" for "one dollars sixty cents (\$1.60)" in Subsection A; inserted "except as provided in Subsection E of this section" in Subsection B; substituted "a micro brewer and" and "each micro brewer" in Subsection E; and, in Subsection F, deleted former Paragraph (2), which read: "after June 30, 1994, twenty-five cents (\$.25) per liter on all liters sold", combined together the former introductory language and former Paragraph (1) into one present paragraph, substituted "a small winer or winegrower and" for "each small winer or winegrower", and deleted "from July 1, 1992 to June 30, 1994" preceding "ten cents" and "and" at the end.

**This section does not implicate or violate the dormant Commerce Clause.** — The dormant Commerce Clause, U.S. Const., Art. I, Sec. 8, limits state regulation of interstate commerce and is primarily concerned with preventing economic protectionism by states, and although NMSA 1978, § 7-17-5(A)(5) provides a lower excise tax rate on beer manufactured or produced by a microbrewer and sold in this state, it does not limit this lower tax rate to beer manufactured or produced in this state; this section does not differentiate between in-state and out-of-state craft distillers or give in-state craft distillers a competitive advantage over out-of-state craft distillers. Section 7-17-5(A)(5)'s purpose and effect are not discriminatory or protectionist and therefore do not implicate or violate the dormant Commerce Clause. 2024 Op. Att'y Gen. No. 24-02.

**Proposed legislation does not discriminate against interstate commerce.** — Proposed legislation that seeks to raise the basic alcohol tax rates imposed by NMSA 1978, § 7-17-5, does not implicate or violate the dormant Commerce Clause, U.S. Const., Art. I, § 8; a statute may be invalidated only where the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits, and the proposed legislation in this case does not distinguish between in-state and out-of-state economic interests on its face and does not discriminate against interstate commerce in its effects. The proposed legislation seeks to unify tax rates for all spirituous liquors, whether the wholesaler selling the alcoholic beverage sells products produced in-state or out-of-state, and does not place a burden on interstate commerce. 2024 Op. Att'y Gen. No. 24-02.

## **7-17-5.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 213, § 38, repealed 7-17-5.1 NMSA 1978, relating to the effective date of Laws 1982, ch. 111, §§ 1 and 2, effective July 1, 1983.

## **7-17-6. Deduction; interstate sales; winegrower-to-winegrower transfers.**

A. A wholesaler may deduct the liters of spirituous liquors, gallons of beer and liters of wine sold and shipped to a person in another state from the units of alcoholic beverages subject to the tax imposed by the Liquor Excise Tax Act; provided that the department may require the wholesaler to submit evidence satisfactory to the department that the units have been sold and shipped to a person in another state.

B. A winegrower may deduct the liters of wine transferred to the winegrower from another winegrower for processing, bottling or storage and subsequent return to the transferor from the units of wine subject to the liquor excise tax on the licensed premises of the winegrower.

**History:** 1978 Comp., § 7-17-6, enacted by Laws 1984, ch. 85, § 4; 1995, ch. 70, § 19; 2008, ch. 82, § 3.



## ANNOTATIONS

**Repeals and reenactments.** — Laws 1984, ch. 85, § 4, repealed former 7-17-6 NMSA 1978, as amended by Laws 1973, ch. 166, § 2, relating to a deduction from gross receipts of receipts from selling beer to certain instrumentalities of the armed forces of the United States, and enacted a new section. For present comparable provisions, see 7-17-9 NMSA 1978.

**The 2008 amendment,** effective July 1, 2008, added Subsection B.

**The 1995 amendment,** effective July 1, 1995, substituted "department" for "director" in two places.

### **7-17-7. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1984, ch. 85, § 12, repealed 7-17-7 NMSA 1978, as enacted by Laws 1971, ch. 22, § 1, relating to deductions from gross receipts for uncollectible debts and for sales to wholesalers, effective July 1, 1984.

### **7-17-8. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1984, ch. 85, § 12, repealed 7-17-8 NMSA 1978, as enacted by Laws 1971, ch. 22, § 2, relating to deductions from gross receipts for uncollectible debts and for sales to wholesalers, effective July 1, 1984.

### **7-17-9. Exemption; certain sales to or by instrumentalities of armed forces.**

Exempted from the tax imposed by Section 7-17-5 NMSA 1978 are alcoholic beverages sold to or by any instrumentality of the armed forces of the United States engaged in resale activities.

**History:** 1953 Comp., § 46-7-21, enacted by Laws 1966, ch. 49, § 7; recompiled as 1953 Comp., § 72-32-9, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 5; 1985, ch. 57, § 1.

### **7-17-10. Date payment due.**

The tax imposed by the Liquor Excise Tax Act is to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.