

Excise Duty Memoranda Series

4.1.1 Producers and Packagers of Wine

July 2003
Revised January 2007*

Overview

The *Excise Act, 2001* (the “Act”) requires a person to obtain a wine licence in order to produce or package wine. This memorandum provides an overview of the obligations and entitlements of persons who may become wine licensees.

Disclaimer

The information in this memorandum does not replace the law found in the Act and its Regulations. It is provided for your reference. As it may not completely address your situation, you may wish to refer to the Act or its Regulations, or contact any Canada Revenue Agency (CRA) regional excise duty office for additional information.

[Proposed amendments]

This memorandum reflects proposed amendments to the Act as contained in Bill C-40, which received first reading on December 5, 2006 in the House of Commons and Bill C-28, which received third reading on December 11, 2006 in the House of Commons. Where information reflects proposed amendments, the information is enclosed in square brackets ([,]). Any commentary in this memorandum should not be taken as a statement by the CRA that such amendments will in fact be enacted in their current form.

* Revised paragraphs are indicated with a side bar in the margin

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La version française de ce document est intitulée *Producteurs et emballeurs de vin*.

Canada

Requirement for a wine licence

- Wine licence para 14(1)(b)
1. A wine licence authorizes a person (i.e., a “wine licensee”) to produce or package wine in Canada. A wine licensee is also permitted to import, export or transport wine.
- Meaning of “wine” s 2
2. “Wine” means:
- (a) a beverage, containing more than 0.5% absolute ethyl alcohol by volume, that is produced without distillation, other than distillation to reduce the absolute ethyl alcohol content, by the alcoholic fermentation of
- an agricultural product other than grain,
 - a plant or plant product, other than grain, that is not an agricultural product, or
 - a product wholly or partially derived from an agricultural product or plant or plant product other than grain;
- (b) sake; and
- (c) a beverage described above that is fortified to not more than 22.9% absolute ethyl alcohol by volume.
3. Definitions of other terms found in the Act and its Regulations that relate to the production and packaging of wine will be available in Excise Duty Memorandum 1.3.1, *Definitions*.
- Prohibition – production and packaging of wine ss 62(1)
4. A person is prohibited from producing and packaging wine except in accordance with a wine licence issued to that person, other than the exceptions noted in paragraph 12 of this memorandum.
- Meaning of “produce” s 2
5. To “produce” wine means any activity that brings wine into existence by fermentation. Accordingly, in all cases, a person who initiates the fermentation process will be considered to be the producer of the wine.
- When is wine produced?
6. For excise duty purposes, wine will be considered produced at the point it has completed initial fermentation. At that time, wine licensees should determine the volume of the wine produced and report that amount on their monthly form B265, *Excise Duty Return – Wine Licensee*, under the section “Additions to Bulk Inventory”, on the line Produced in the month.
- Meaning of “packaged” s 2
7. To package wine means to place it into a container with a capacity of not more than 100 litres that is ordinarily sold to consumers without being further repackaged into smaller containers. Packaging wine also includes placing it into a marked special container.
- Meaning of “mark” and “special container” s 2
8. A marked special container, in respect of wine, is a container with a capacity of more than 100 litres marked in a prescribed form and manner to indicate that the container is intended for delivery to and for use at a bottle-your-own premises.

Small wine producers

- Small producers
ss 135(2)
9. The Act provides for the relief of excise duty imposed on wine that is produced and packaged by a person who qualifies as a small producer.
- Wine licence required
para 14(1)(b)
10. A person who qualifies as a small producer of wine is still required to obtain a wine licence and to fulfil all of the obligations associated with holding that licence, except for the remittance of duty.
11. Additional information on the requirements and obligations of small producers is provided in Excise Duty Memorandum 4.1.2, *Small Producers of Wine*.

Wine licence not required

- Exceptions to the
requirement for a wine
licence
ss 62(2)
12. The requirement to obtain a wine licence to produce or package wine in Canada does not apply to:
- the production of wine by individuals for their personal use, or the packaging of such wine by the individuals;
 - the packaging of wine from a marked special container by a purchaser at authorized bottle-your-own premises.
- Meaning of “personal
use”
s 2
13. “Personal use”, in relation to the use of wine, means that the wine is produced by an individual and is used by that individual or by others at the individual’s expense. It does not include the sale or other commercial use of the wine. The production of wine by an individual may take place at a residence or at a ferment-on-premises facility.
14. Additional information relating to ferment-on-premises facilities is available in Excise Duty Memorandum 4.1.3, *Ferment-On-Premises Registrants*.
- Meaning of “bottle-your-
own premises”
s 2
15. A “bottle-your-own premises” means premises that are authorized under provincial legislation to supply alcohol from a marked special container for the purpose of being packaged by a purchaser of alcohol.
16. Additional information on the marking of special containers will be available in Excise Duty Memorandum 4.8.1, *Special Containers of Wine*. Additional information on the blending of wine with spirits is available in Excise Duty Memorandum 3.1.2, *Licensed Users*.

Obtaining a wine licence

17. Instructions and requirements for obtaining a wine licence are provided in Excise Duty Memorandum 2.2.1, *Obtaining and Renewing a Licence*.

Obtaining other licence types

18. Depending upon the activities of a wine licensee, the licensee may be required to possess other types of licences. For example, a wine licensee may require an excise warehouse licence or a user’s licence.

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- Excise warehouse licence ss 14, ss 135(3) and s 136
19. A wine licensee who wishes to defer the payment of excise duty after packaging wine will be required to possess a separate excise warehouse licence to store non-duty-paid packaged wine. An excise warehouse licence allows a wine licensee to defer the payment of excise duty until such time as the packaged wine is removed from the excise warehouse and entered into the duty-paid market.
- User's licence para 14(c), 73(d) and s130
20. A wine licensee who wishes to use bulk spirits to fortify bulk wine must obtain a user's licence.
21. Additional information on the types of licences a person may be required to have to perform certain activities regulated under the Act is available in Excise Duty Memorandum 2.1.1, *Licence Types*.

Possession and transportation of wine

- Bulk wine ss 70(2)
22. The possession of bulk wine is strictly controlled under the Act. Wine licensees may transport bulk wine if they produced or imported it. In other situations, a person who holds an alcohol registration may also transport bulk wine on behalf of a wine licensee.
- Possession of non-duty-paid wine ss 88(2) and (3) *Regulations Respecting the Possession of Non-Duty-Paid Packaged Alcohol*
23. A person prescribed by Regulations may transport non-duty-paid packaged wine. This includes a person who is authorized by Customs to transport imported packaged alcohol that has been reported to Customs, or any person who has acceptable documentation showing that they are transporting wine on behalf of another person as prescribed in the Regulations.
24. Additional information relating to the possession and transportation of wine will be available in Excise Duty Memoranda 4.2.1, *Possession and Transportation of Wine*.

Imposition and rates of excise duty

- Imposition – bulk wine ss 134(1) and (2)
25. Excise duty is imposed on bulk wine that is taken for use. It is payable at the time the wine is taken for use by the wine licensee who is responsible for the bulk wine at that time.
- Responsibility for bulk wine ss 113 and 115
26. Generally, the licensee responsible for bulk wine is the wine licensee who owns the bulk wine. If a wine licensee does not own the bulk wine, then responsibility rests with the wine licensee who last owned it, imported or produced it.
- Exception – bulk wine ss 134(3)
27. Excise duty is not imposed on bulk wine produced by an individual for their personal use and that is consumed in the course of that use.
- Imposition – packaged wine s 135
28. Excise duty is imposed on wine that is packaged in Canada at the time the wine is packaged. It is payable at that time by the wine licensee who was responsible for the bulk wine, unless the wine is entered into an excise warehouse immediately after packaging.

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| Exception – packaged wine ss 135(2) | <p>29. Excise duty is not imposed on wine :</p> <ul style="list-style-type: none"> • [that is produced in Canada and composed wholly of agricultural or plant product grown in Canada]; • produced and packaged by individuals for their personal use; or • produced and packaged by a small producer (refer to paragraphs 9 to 11 of this memorandum). |
| Payment – removal from warehouse ss 136(1) | <p>30. Excise duty is payable on packaged wine that is removed from an excise warehouse for entry into the duty-paid market by the excise warehouse licensee at the time of its removal.</p> |
| Exception – Removals for consignment sales ss 136(2) | <p>31. [A small wine licensee may remove packaged wine they produced or packaged from their own excise warehouse for delivery and sale on a consignment basis to a retail store. The retail store must not be located on the premises of a wine licensee and must be operated on behalf of two or more small wine licensees. For consignment sales, the wine is deemed to be removed from the excise warehouse for entry into the duty-paid market at the time the wine is sold. Therefore duty would be payable by the licensee at the time wine is sold.]</p> |
| Meaning of “small wine licensee” ss 136(3) | <p>32. [For the purposes of section 136 of the Act, a wine licensee is a small wine licensee during a fiscal year of the licensee if, in the previous fiscal year, the total amount of wine sold by the licensee did not exceed 60,000 litres.]</p> |
| Duty not payable – wine samples ss 147(4) | <p>33. [Duty is not payable on non-duty-paid packaged wine, other than wine contained in a marked special container, that is removed from the excise warehouse of the wine licensee who produced or packaged the wine if the wine is to be provided free of charge to individuals as a sample consumed at the premises where the licensee produces or packages wine.]</p> <p>34. Additional information on the imposition of excise duty will be available in Excise Duty Memorandum 4.2.2, <i>Imposition and Responsibility for Excise Duty on Wine</i>.</p> <p>35. Information on the rates of excise duty is available in Excise Duty Memorandum 1.5.1, <i>Rates of Excise Duty</i>.</p> |

Excise duty exemption on wine composed wholly of agricultural or plant product grown in Canada

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| Exemption | <p>36. [Wine that is produced in Canada wholly from Canadian-grown agricultural or plant products and that is packaged on or after July 1, 2006, qualifies for an excise duty exemption.] This means that all of the primary ingredients that are fermented (including grapes, berries, other fruits, honey and dandelions) must have been grown in Canada.</p> |
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| Added ingredients | 37. [Sections B.02.100 to B.02.123 of Division 2 of the <i>Food and Drug Regulations</i> sets out the identity standard for wine and lists the ingredients that may be added. These regulations are available on the Health Canada Web site at www.hc-sc.gc.ca/fn-an/alt_formats/hpfb-dgpsa/pdf/legislation/e_b-text-1.pdf . Any juice flavourings or spirits added in the winemaking process must be made wholly from Canadian-grown agricultural or plant product. Other incidental agricultural or plant product based ingredients that are added in the winemaking process, such as sugar, will not be required to be made wholly from Canadian-grown agricultural or plant product. |
| Blended wines | 38. Where a wine licensee blends wine, then the final blended wine that is packaged must be made wholly from Canadian-grown agricultural or plant products in order to qualify for the excise duty exemption. |
| Example | A wine licensee produces or purchases two wines made wholly from grapes or other fruit grown in Canada (wine No.1 and wine No. 2). That wine licensee also produces or purchases a wine made from grapes or other fruit grown outside Canada (wine No. 3). In this example, wine No. 1 and wine No. 2 qualify for the exemption, but wine No. 3 does not. If the licensee blends wine No. 1 with wine No.2, then the resultant blend qualifies for the exemption. If the wine licensee blends wine No. 1 or wine No. 2 with wine No. 3, the resultant blended wine does not qualify for the exemption. |
| Exceptions | 39. The excise duty exemption does not apply to wine when: <ul style="list-style-type: none">• raw materials used to produce the wine are not wholly Canadian-grown;• records are insufficient to verify that the raw materials are wholly Canadian-grown;• a qualified wine is blended with another wine that is not made from wholly Canadian grown agricultural or plant products;• spirits that are added to fortify the wine are not produced from wholly Canadian-grown agricultural products;• juice that is added is not made from wholly Canadian-grown agricultural or plant products. |
| Warehousing of qualified wines | 40. Where a wine licensee packages wine that qualifies for this exemption, the responsible licensee will not enter that wine into the inventory of its excise warehouse. The exempt wine inventory must be recorded separately from the duty-deferred inventory that is in the excise warehouse.] |

Maintaining records and filing returns

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| Keeping records ss 206(1) | 41. Every person who possesses a licence under the Act is required to maintain all records that are necessary to determine whether they are in compliance with the Act. |
| Types of records for wine composed wholly of Canadian-grown agricultural or plant products | 42. [A wine licensee that claims an exemption on wine that is made from wholly Canadian-grown agricultural or plant products must maintain adequate records. Records may include, but are not limited to, maintaining production records sufficient to trace the raw materials and resultant wine to the package (e.g. blend sheets, transfer sheets), maintaining inventory records of exempt and dutiable products, and maintaining records of transactions between the wine licensee and its raw material source(s) and other wine licensees (e.g. shipping documents, invoices).] |

43. Additional information on the requirement to maintain books and records is available in Excise Duty Memorandum 9.1.1, *General Requirements for Books and Records*.
- Filing returns ss 160(1) 44. Every wine licensee is required to file form B265, *Excise Duty Return – Wine Licensee*, in respect of each fiscal month, and to calculate and remit any excise duty payable on that return. A licensee who possesses more than one licence will be required to file a separate return for each licence. For example, a spirits licensee who also possesses an excise warehouse licence will be required to file a B265, *Excise Duty Return – Wine Licensee* and a B262, *Excise Duty Return – Excise Warehouse Licensee*.
- Fiscal month ss 159(1) 45. Where a licensee has determined a fiscal month for GST/HST purposes, the same fiscal month applies for purposes of excise duty. Where such a fiscal month has not yet been determined, a person may choose a fiscal month using established GST/HST rules, or use a calendar month.
- Branches or divisions ss 164(1) 46. Where a wine licensee has branches or divisions with distinct operations under a wine licence, the licensee may apply to the Minister for authority to file separate returns for each branch or division.
47. Additional information with respect to the filing of monthly returns, remitting excise duty and paying the correct amounts of excise duty is available in Excise Duty Memorandum 10.1.1, *Returns and Payments*. Information relating to the amounts to be included on an excise duty return contained in Excise Duty Memorandum 10.1.6, *Completing an Excise Duty Return – Wine Licensee*.

Debts and the collections process

- Debts ss 284(1) 48. Excise duty and other amounts payable under the Act are debts due to the Crown and may be recovered through the court process or in any manner provided under the Act.
- Reminder notice 49. A wine licensee who owes excise duty or is late filing returns may receive a notice or a telephone call from a CRA official as a reminder of their obligation to pay past due excise duty or file outstanding returns.

Contraventions and penalties

- Enforcement Part 6 50. Information on contraventions and penalties will be provided in Excise Duty Memorandum 11.2.1, *Contraventions and Penalties*.

All of the memoranda in the Excise Duty Memoranda Series will be available on the CRA Web site at www.cra-arc.gc.ca/tax/technical/act2001-e.html.