

Title 35 Mississippi State Tax Commission

Part VIII Miscellaneous Tax

Subpart 01. Beer

35.VIII.1.01 Chapter 01. *Transportation through Counties Which Do Not Authorize the Sale of Beer*.....page 1

35.VIII.1.02 Chapter 02. *Common Expiration Date for Permits and Licenses*.....page 2

Subpart 02. Gas Severance

35.VIII.2.01 Chapter 01. *Payment of Tax--Person Liable*.....page 2

35.VIII.2.02 Chapter 02. *Determining the Sales Price or Market Value of Natural Gas*.....page 3

Subpart 03. Tobacco Tax

35.VIII.3.01 Chapter 01. *Stamps shall be properly affixed to cigarettes; stamp invoices*.....page 5

35.VIII.3.02 Chapter 02. *Refund*.....page 6

35.VIII.3.03 Chapter 03. *Cigarette Making Machines; taxability of Tobacco Products*.....page 7

Subpart 01 Beer Tax

Chapter 01 Transportation through Counties which do not Authorize the Sale of Beer

100 The Commissioner and Chairman of the State Tax Commission having received numerous complaints from the enforcement branch of the Alcoholic Beverage Control Division, members of the State Highway Patrol and other law enforcement personnel, that there presently exists in the State the widespread practice of transporting beer from counties wherein said beer is legal into counties where beer is not legal, and the making of sales thereof in such "dry" areas; that the Commissioner feels it is necessary and expedient at this time to enact regulations concerning the transportation of beer through "dry" counties and between counties wherein the sale and possession thereof is legal. In furtherance of the aforesaid purpose, the commissioner does hereby enact, promulgate and adopt the following rules and regulations:

1. Beer shall not be transported through any county in this State which forbids the sale of beer unless by common carrier or unless its transportation is in closed trucks of wholesale beer dealers, the aforesaid trucks carrying the name of the wholesale dealer in large letters on the side of the truck so that it might be easily legible to persons traveling along the highway.
2. All transportation of beer between counties within this State must be accompanied by a bill of lading or an invoice stating the name of the consignor and consignee, the date and time of departure, route to be taken in transit and showing the

destination to be into a county or municipality that legally authorizes the sale of beer; or which is accompanied by a load out sheet stating the name of the consignor and that the beer is to be delivered to retailers in a county or municipality which authorizes the sale of beer, the date and time of departure and the route to be taken in transit.

3. Any permittee found in violation of this regulation shall, upon due notice and hearing, have his permit cancelled.
4. Exceptions to this rule may be made upon written authority of the Commissioner permitting the transportation of beer between counties in unusual and necessitous situations.

101 Reserved

Chapter 02 Expiration Date for Permits and Licenses

100 Retail beer permits and licenses shall be issued for twelve (12) months and shall be renewed annually on the first day of the month in which the permit expires.

101 All wholesaler's, manufacturer's and brewpub's licenses to distribute beer in each county will be issued for twelve (12) months and shall be renewed annually on the first day of the month in which the license expires..

102 A permittee that has been issued more than one beer permit will be required to have one expiration date for all beer permits held. Permittees holding more than one beer permit with different expiration dates will be issued prorated beer permits in order to align expiration dates.

103 Temporary permits will be issued to retailers for special events lasting fourteen (14) days or less to expire at the end of the fourteenth day or when the event ceases, whichever occurs first.

104 Reserved

Subpart 02 Gas Severance Tax

Chapter 01 Payment of Tax -- Persons Liable

100 The tax on gas severed from within the state is levied upon the producers of such gas in the proportion of their ownership. The amount of tax on gas retained and used by a producer for fuel shall be paid by the producer. Otherwise, the tax is deducted, withheld, and paid as provided below.

101 The operator, being the person in charge of the production operations, is authorized, empowered, and required to deduct the amount of severance tax from any amount due the owners of such gas before making payments to such owners. Such tax shall become due and payable by the operator to the State Tax Commission.

- 102 When the operator sells or delivers gas produced by him for owners taking their gas in kind under contracts or agreements requiring the purchaser to pay the owners direct, then the purchaser shall be empowered and required to deduct and withhold the amount of severance tax from any amount due to such owners before making payments to such owners. Such tax shall become due and payable by the purchaser to the State Tax Commission.
- 103 When payment to the owners for any severed gas is being withheld for any reason by the operator or purchaser, then the operator or purchaser withholding such payment is empowered and required to deduct and withhold the severance tax from the gross amount of payment being withheld and to remit such tax to the State Tax Commission.
- 104 Reserved

Chapter 02 Determining the Sales Price or Market Value of Natural Gas

- 100 General Provisions
- 101 Miss. Code Ann. Section 27-25-701(d) requires the sales price or market value of natural gas to be determined at the mouth of the well.
- 102 If natural gas is used by the producer or owner of the well, resulting in no actual sale, a sales price or market value must still be determined to compute severance tax.
- 103 The actual sales price negotiated for the sale of natural gas occurring at the mouth of the well shall be the sales price or market value of the natural gas for severance tax purposes under Miss. Code Ann. Section 27-25-701(d) unless the relationship between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true market value.
- 104 If the sale of natural gas occurs at the mouth of the well but is not indicative of the true market value, the Commissioner may use the valuation requirements for natural gas that is used by the producer or owner of the well to determine the sales price or market value for severance tax purposes under Miss. Code Ann. Section 27-25-701(d).
- 105 Natural gas which is used by the producer or owner of the well shall be valued at the same value per MCF as that of gas of like quality that is sold in the same or nearby field.
- 106 If there is no sale of gas of like quality in the same or nearby field, the value of the gas used shall be reported at the statewide benchmark to be determined by the Commissioner. The statewide benchmark shall be reviewed and amended as needed but no more often than quarterly.

- 107 In circumstances where the sale of natural gas does not occur at the mouth of the well, the market value of the natural gas shall be determined by deducting allowable marketing and transportation costs from the producer's gross proceeds from the sale of gas and by adding back the value of byproducts created while processing the gas for sale.
- 108 (Reserved)
- 200 Allowable Deductions for the Determination of the Value of Natural Gas sold at the Well Head
- 201 Certain marketing costs and third party transportation will be considered allowable deductions for the determination of the value of natural gas. Costs which are not allowed as a deduction under any circumstances include, but are not limited to, costs associated with production, costs associated with normal lease separation, insurance premiums, and all operating expenses.
- 202 Marketing costs and third party transportation are those costs incurred by the producer to get the unmarketable gas to a salable state and /or deliver the gas from the mouth of the well to the market. Deductible marketing costs are limited to:
1. Sweetening which is defined as any activity that removes acid gases, such as hydrogen sulfide and carbon dioxide, from the well stream. Sweetening includes absorption, stabilization, thermal and catalytic conversions, chemical reaction and regeneration;
 2. Dehydration which is defined as any activity which removes water vapor that is commonly associated with raw natural gas;
 3. Compression which is defined as any activity associated with processing or transporting gas which mechanically increases the pressure of natural gas;
 4. Third party transportation which will only be an allowable deduction if the actual charges are for trucking, barging, and pipeline fee charged the producer by an entity other than the purchaser.
- 203 Natural gas used by the owner or producer on a leased property is subject to the provisions of this Chapter of the Mississippi Administrative Code as well as applicable statutory provisions. The value of natural gas used shall be reported as that of like quality that is sold in the same or nearby field.
- 204 The deductions for marketing costs and third party transportation cannot exceed an 8% limit of the sales price of the gas, there will be no carryover deduction allowed.

- 205 Taxpayers utilizing available deductions are required to report these deductions to the Mississippi Department of Revenue when filing monthly gas severance tax returns.
- 206 Taxpayers must report the total gross proceeds from the sale of gas and enter the deductions taken on each lease as a separate entry on the monthly gas severance tax return. If a producer has received approval for deductions previously, the producer must resubmit the request and documentation for the deductions.
- 207 (Reserved)
- 300 A school district's royalty interest in sixteenth section land is exempt from gas severance. Gas producers or purchasers will report total cubic feet of gas produced or purchased on sixteenth section land and use code 8 on the return to exempt the school district's royalty interests from the total produced or purchased.
- 400 (Reserved)

Subpart 03 Tobacco Tax

Chapter 01 Stamps shall be properly affixed to cigarettes; Stamp invoices

- 100 The following tobacco is contraband and subject to confiscation without the need of a warrant if found present by the Department or its agents:
1. Any cigarettes which, if a wholesaler, are in its possession for more than 72 hours and have not been authorized to be segregated for interstate sale or maintained in a bonded warehouse; or, if a retailer, are in its possession for more than 48 hours; and
 - a. Which do not have the applicable stamp properly affixed as required; or
 - b. Which are possessed by a wholesaler or retailer who doesn't have a tobacco permit or whose permit has been revoked.
 2. Any other tobacco product,
 - a. Which are possessed by a wholesaler or retailer who doesn't have a tobacco permit or whose permit has been revoked; or
 - b. Upon which the proper excise tax has not been paid.
- 101 Affixed as required means,
1. So securely affixed as to require the continued application of water or of steam to remove it, or otherwise affixed so that it may not be removed without destruction or mutilation; and
 2. A materially complete stamp is affixed, as opposed to merely a partial stamp. Although a small portion of the stamp may be missing and still be considered "materially complete", the stamp is not considered "materially complete" if it does not clearly indicate the due payment of the tax and/or clearly identify, by serial number or otherwise, the permittee who affixed the stamp to the particular package as

required by Miss. Code Ann. Section 27-69-3(r). All digits within the serial number or letters within the word "Mississippi" must be legible. Any stamp which fails to meet these standards will be considered "partial stamps" and subject the cigarettes, to which it is affixed, to confiscation.

102 Retailers and wholesalers shall maintain all stamp invoices separately from other invoices for a period of three years from the date of purchase of such stamps. Failure to do so may be considered a violation of Miss. Code Ann. Section 27-69-37.

103 (Reserved)

Chapter 02 Refund

100 Refund on Damaged or Unfit Goods

101 Pursuant to Miss. Code Ann. Section 27-69-49, there are certain circumstances under which a dealer may receive a refund due to cigarettes which have become unfit for use and consumption, unsalable, or for any other legitimate loss which may occur, upon proof of such loss.

102 Any cigarettes which are shown to be six (6) months or older will be presumed to be unfit for use and consumption for purposes of Miss. Code Ann. Section 27-69-49.

103 All refunds under this regulation shall be made in the form of new stamps being issued to the dealer. The value of the refund shall be equal to the aggregate value of the tax paid on the goods adjudged to be unfit for use, consumption, or unsalable.

104 The request for refund shall be accompanied by an affidavit prepared pursuant to Miss. Code Ann. Section 27-69-49.

105 Any cigarettes for which a refund is paid shall not be offered for sale or given away within this State.

106 (Reserved)

200 Refund on Goods Shipped into Other States

201 Any wholesaler who ships to another state cigarettes upon which the proper Mississippi tax has been previously paid and upon which a Mississippi stamp is affixed may request a refund of the tax paid on such cigarettes pursuant to Miss. Code Ann. Section 27-69-51.

202 Such refund shall consist of new stamps issued to it by the Commissioner in an amount equal to the aggregate value of the tax previously paid.

203 A request for such refund must be accompanied by an affidavit from the purchaser swearing certain information, including the units and items received, dates of delivery,

acknowledgment of receipt, that Mississippi stamps were on the cigarettes in an amount equal to the amount of refund being requested by the wholesaler, and an acknowledgment that the stamps affixed to the cigarettes for which refund is requested have had the cancellation marked “void” by ink or by imprinting.

204 (Reserved)

Chapter 03 Cigarette Making Machines; taxability of Tobacco Products

- 100 Federal guidelines, IRS 26 U.S.C. 5711, 5712, 5713 and 27 CFR Part 40 of the Alcohol and Tobacco Tax and Trade Bureau regulations, require every person, before commencing business as a manufacturer of tobacco products, to apply for a permit from the appropriate federal agency to engage in such business and file a bond. A person shall not engage in business as a manufacturer of tobacco products without a permit to engage in such business. Manufacturing shall include the making of cigarettes by the use of a cigarette making machine on the premises of or in an area controlled by a tobacco retailer.
- 101 A “cigarette making machine” is a machine or mechanical device (designed for commercial use, primarily operated by a power source other than human power, such as electricity) that is loaded with loose tobacco and cigarette tubes, cigarette papers or any substance not containing tobacco for the purposes of producing, filling, rolling, dispensing or otherwise generating cigarettes. Hand-held, manually operated machines sold by retailers to consumers for off-premises use in making cigarettes for personal consumption are not considered cigarette making machines for purposes of this regulation.
- 102 Pursuant to Miss. Code Ann. Section 27-69-15, a tobacco retailer is required to present all un-stamped cigarettes it receives to a permitted wholesaler within 48 hours of receipt for the purpose of having the proper stamps affixed to the cigarettes in the same manner as if the cigarettes had come from the wholesaler.
- 103 In addition to other means of receipt, a tobacco retailer shall be deemed to receive cigarettes if manufactured on-site or in an area controlled on behalf of the tobacco retailer by an employee or agent operating the machine or permitting others, including customers, to operate a cigarette making machine. Therefore, a tobacco retailer must ensure that all cigarettes received via manufacturing by a cigarette making machine as outlined in the preceding sentence are properly stamped.
- 104 Any retailer who assembles cigarettes on-site using a cigarette making machine and who did not sign the 1998 Master Settlement Agreement, as defined in Miss. Code Ann. Section 27-70-3, shall be considered a manufacturer subject to the Nonsettling Manufacturer Cigarette Fee as well as all requirements set forth in Miss. Code Ann. Section 27-70-1, et seq. for nonsettling manufacturers.