



**HANDBOOK**

**FOR**

**WINERY SHIPPING PERMITS**

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Changes made to this handbook since the previous revision date have been highlighted with a **gray background**.

Please report errors, omissions or suggestions for improvement to this handbook to ABC legal counsel Phil Wilkes by telephone at 785-368-8388, by fax at 785-296-7185 or by email at phil\_wilkes@kdor.state.ks.us.

## **Background**

There are two types of wine shipping permits available under the Liquor Control Act which allow wine manufacturers to sell wine by mail, telephone or internet and then ship the wine to the purchaser residing in Kansas for their personal use and not for resale. The purchaser must be at least 21 years of age. These permits were created by Sections 4 and 6 of 2006 Senate Bill 297, effective July 1, 2006, and are now codified as K.S.A. 41-348 and 41-349.

Sale or shipment of wine which requires a wine shipping permit as described in these two statutes is prohibited unless a valid shipping permit has been issued by the Director of the Alcoholic Beverage Control Division. Any person who knowingly makes, participates in, transports, imports or receives any wine in violation of either of these two statutes is guilty of a class B misdemeanor. [Subsection (f) of K.S.A. 41-348 and subsection (f) of K.S.A. 41-349]

## **Small Winery Shipping Permit** **(K.S.A. 41-348)**

### **Overview**

The small winery shipping permit is described in K.S.A. 41-348, which is a new statute created by Senate Bill 297 passed by the 2006 Kansas Legislature which went into effect on July 1, 2006. Wine may be sold to consumers in Kansas under this permit even if the wine is distributed in Kansas through the three-tier system (supplier, distributor, retailer).

### **Qualifications for permit**

The small winery shipping permit is authorized for the following entities:

- Kansas farm wineries (which are limited by statute to producing no more than 100,000 gallons of wine per year)
- Out-of-state wine manufacturers which are licensed by the state where they operate and produce no more than 100,000 gallons of wine per year

[Subsection (a) of K.S.A. 41-348]

### **Application process**

Application for the permit must be made on form ABC-267, which is available from ABC by either mail, fax or its website at [www.ksrevenue.org/abc.htm](http://www.ksrevenue.org/abc.htm). The fee for an original permit is \$50 and is valid until June 30th following the date of issue. The fee for renewing the permit annually is \$10. The applicant must provide a "true copy" of their current wine manufacturing license from the state where they are doing business. (A "true copy" of the license is a copy that accurately reproduces all of the information on the original license.) [Subsection (a) of K.S.A. 41-348 and proposed new K.A.R. 14-24-2]

The Director may refuse to issue a permit upon finding that the applicant has failed to meet the qualifications in subsection (a) of K.S.A. 41-348 or any rules and regulations relating thereto. In such case, the applicant has the right to request a hearing before the Director on the issues, to be conducted in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq. [Subsection (d) of K.S.A. 41-348]

If a permit is issued to an out-of-state applicant, then the permit holder shall be deemed to have appointed the Kansas Secretary of State as its resident agent and representative to accept service of process from the Secretary of Revenue, Director of Alcoholic Beverage Control, and Kansas courts relating to enforcement of K.S.A. 41-348 and of the entire Liquor Control Act, K.S.A. 41-101 et seq., and related rules and regulations. [Subsection (c) of K.S.A. 41-348]

A permit holder may choose to surrender the permit. However, there will be no refund of the fee paid. [Policy of the Director approved 05/23/06]

## **Qualifications of purchaser**

The purchaser must be a consumer in Kansas who is at least 21 years of age. The person must be purchasing the wine for their personal use and not for resale. [Subsection (b)(1) of K.S.A. 41-348]

## **Sales process and documents**

The purchaser must pay the purchase price and shipping costs directly to the permit holder. [Subsection (b)(2) of K.S.A. 41-348]

The purchaser must designate a retail liquor store licensed in Kansas where the purchaser intends to take delivery of the shipment. [Subsection (b)(3) of K.S.A. 41-348]

The permit holder shall prepare five copies of the shipping record, form ABC-189, which is available on ABC's website at [www.ksrevenue.org/abc](http://www.ksrevenue.org/abc). [Subsection (a) of proposed new K.A.R. 14-24-3]

The permit holder shall retain two copies of the shipping record, as follows:

- one copy to submit to the Director with its annual report at the end of the calendar year.
- one copy for possible future audit by the Director for a period of three years.

[Subsection (b) of proposed new K.A.R. 14-24-3]

The permit holder shall attach three copies of the shipping record to the outside of the shipment, for distribution as follows:

- one copy for the Kansas retailer to retain for its records for three years for possible future audit by the Director.
- one copy for the Kansas retailer to submit to the Director with its monthly Kansas Direct Wine Shipment Enforcement Tax Return - Retail Liquor Store (form ABC-185).
- one copy to be provided to the purchaser at the time the purchaser picks up the shipment from the Kansas retailer.

## **Shipping and delivery**

The permit holder shall ship the wine in its original unopened container to a licensed retail liquor store in Kansas. [Subsection (b)(3) of K.S.A. 41-348]

Upon receipt of the shipment, the retailer may open and inspect the contents to verify their completeness and condition. The retailer may refuse delivery of the shipment if the contents have been damaged as evidenced by product leaking from the shipping container. The retailer shall notify the purchaser to pick up the wine. The purchaser must pick up the wine within 30 days of when the retailer received it unless the parties agree otherwise. Wine not picked up by the purchaser in a timely manner shall be disposed of by the retailer in accordance by rules and regulations approved by the Secretary of Revenue. See below. [Subsection (e) of K.S.A. 41-348]

When the purchaser picks up the wine, the retailer shall require the purchaser to provide photo identification to verify that the person picking up the wine is the same person who purchased it and is at least 21 years of age. The retailer may charge the purchaser up to a \$5 handling charge for each

shipment and shall collect from the purchaser the 8% enforcement tax pursuant to KSA 41-4101. [Subsection (e) of K.S.A. 41-348]

The tax shall be calculated upon the total price paid by the purchaser, which includes the following:

- the purchase price and handling and shipping charges paid by the purchaser to the permit holder, as shown on the shipping record.
- the handling charge paid by the purchaser to the retailer.  
[Proposed new K.A.R. 14-24-6]

One copy of the shipping record shall be given to the purchaser. The retailer shall retain two copies of the shipping record. The retailer will attach one copy to their monthly Kansas Direct Wine Shipment Enforcement Tax Return - Retail Liquor Store (form ABC-185) to be mailed to the Kansas Department of Revenue. The other copy will be retained by the retailer for three years and shall be subject to audit by the Department.

### **Disposition of wine shipment if damaged or purchaser fails or refuses to accept delivery**

If the purchaser fails to pick up the shipment after notification by the retailer, then the retailer must notify the Director in writing. The retailer will document in writing what efforts the retailer made to contact the purchaser. The Director or the Director's designee will pick up the wine shipment and the purchaser's copy of the shipping record and the wine shall become the property of the Director. In such case, the retailer will not receive a handling fee and no direct wine shipment enforcement tax shall be calculated or reported by the retailer. [Subsection (a) of proposed new K.A.R. 14-24-4]

If the purchaser refuses to take delivery of the shipment because the contents have been damaged or for any other reason, then the purchaser or retailer shall contact the permit holder and the purchaser, retailer and permit holder should try to mutually agree on how to resolve the situation. If they are unable to reach an agreement, then the purchaser, retailer or permit holder must contact the Director in writing and request a decision on how to resolve the situation. The decision of the Director is binding upon the purchaser, retailer and permit holder. If the decision of the Director does not result in the wine being delivered to the purchaser or returned to the permit holder, then the wine will become the property of the Director. In such case, the retailer will not receive a handling fee and no direct wine shipment enforcement tax shall be calculated or reported by the retailer. [Subsection (b) of proposed new K.A.R. 14-24-4]

Wine which becomes the property of the Director will either be destroyed or be sold by the Director at public auction. Only licensed retail liquor stores may bid. The net proceeds from the auction will be deposited as liquor enforcement tax revenue as provided by K.S.A. 79-4108.

### **Filing of reports and payment of gallonage taxes by out-of-state permit holders**

Out-of-state permit holders shall file an annual report of sales and shipments into Kansas using the Direct Wine Shipping Permit Annual Report of Sales to Kansas Customers (form ABC-270). They shall also calculate and remit the gallonage tax on those sales in accordance with KSA 41-501 et seq. using the Direct Wine Shipping Permit Annual Gallonage Tax Return (form ABC-268). These forms can be found on ABC's website at <http://www.ksrevenue.org/abclireg.htm>. The permit holder shall complete the return and mail it with the tax due to the Director by January 15 following the end of each calendar year. One copy of each of the shipping record for that year shall be attached to the return until such time as the Department provides a means to submit this information electronically. [Proposed new K.A.R. 14-24-5]

The gallonage tax on wine is based upon the alcoholic content, as follows:

- 30 cents per gallon for wine containing 14% or less alcohol by volume
  - 75 cents per gallon for wine containing more than 14% alcohol by volume
- [Subsection (b)(1) of K.S.A. 41-501]

Out-of-state permit holders must allow the Kansas Director of Taxation (or designated agent) to perform an audit of their records relating to sales and shipments under this permit. [Subsection (b)(6) of K.S.A. 41-348]

### **Filing of reports and payment of gallonage taxes by in-state permit holders**

Kansas farm wineries shall include the sales made pursuant to this shipping permit on the new Farm Winery Monthly Report of Sales (form ABC-262). Since Kansas farm wineries pay gallonage tax on the wine at the time of bottling, they are not required to file forms ABC-268 and ABC-270 described above for out-of-state permit holders.

### **Filing of reports and payment of liquor enforcement taxes by Kansas retail liquor stores**

Kansas retailers shall report the transactions and remit the 8% enforcement tax collected using the Kansas Direct Wine Shipment Enforcement Tax Return - Retail Liquor Store (form ABC-185). This form is available on the ABC website at <http://www.ksrevenue.org/abclireg.htm>.

### **Refusal to renew a permit or revocation of a permit**

The Director may revoke or refuse to renew an existing permit upon finding that the applicant has failed comply with any of the provisions of K.S.A. 41-348 or K.S.A. 41-501 et seq. or any rules and regulations adopted pursuant thereto, including the filing of required reports and payment of gallonage taxes due. In such case, the applicant has the right to request a hearing before the Director on the issues, to be conducted in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq. [Subsection (d) of K.S.A. 41-348]

## **Large Winery Shipping Permit** **(K.S.A. 41-349)**

### **Overview**

The large winery shipping permit is described in K.S.A. 41-349, which is a new statute created by Senate Bill 297 passed by the 2006 Kansas Legislature and which went into effect on July 1, 2006. Wine may be sold to consumers in Kansas under this permit even if the wine is distributed in Kansas through the three-tier system (supplier, distributor, retailer).

Kansas wine manufacturers producing more than 100,000 gallons of wine per year are not eligible for a large winery shipping permit. However, there are no such wine manufacturers currently licensed in existence. If there were, they would have to distribute their products in Kansas through the three-tier system (licensed wine distributors and retailer stores).

### **Qualifications for permit**

The out-of-state wine manufacturer must:

- produce at least 100,000 gallons of wine per year
- be licensed by the state where it produces the wine

[Subsection (a) of K.S.A. 41-349]

### **Application process**

Application for the permit must be made on form ABC-267, which is available from ABC by either mail, fax or its website at [www.ksrevenue.org/abc.htm](http://www.ksrevenue.org/abc.htm). The fee for an original permit is \$50 and is valid until June 30th following the date of issue. The fee for renewing the permit annually is \$10. The applicant must provide a "true copy" of their current wine manufacturing license from the state where they are doing business. (A "true copy" of the license is a copy that accurately reproduces all of the information on the original license.) [Subsection (a) of K.S.A. 41-349]

The Director may refuse to issue a permit upon finding that the applicant has failed to meet the qualifications in subsection (a) of K.S.A. 41-349 or any rules and regulations relating thereto. In such case, the applicant has the right to request a hearing before the Director on the issues, to be conducted in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq. [Subsection (d) of K.S.A. 41-349]

If a permit is issued to an out-of-state applicant, then the permit holder shall be deemed to have appointed the Kansas Secretary of State as its resident agent and representative to accept service of process from the Secretary of Revenue, Director of Alcoholic Beverage Control, and Kansas courts relating to enforcement of K.S.A. 41-349 and of the entire Liquor Control Act, K.S.A. 41-101 et seq., and related rules and regulations. [Subsection (c) of K.S.A. 41-349]

A permit holder may choose to surrender the permit. However, there will be no refund of the fee paid. [Policy of the Director approved 05/23/06]

## **Qualifications of purchaser**

The purchaser must be a consumer in Kansas who is at least 21 years of age. The person must be purchasing the wine for their personal use and not for resale. [Subsection (b)(1) of K.S.A. 41-349]

## **Sales process and documents**

The purchaser must pay the purchase price and shipping costs directly to the permit holder. [Subsection (b)(3) of K.S.A. 41-349]

The purchaser must designate a retail liquor store licensed in Kansas where the purchaser intends to take delivery of the shipment. [Subsection (b)(2) of K.S.A. 41-349]

The permit holder shall prepare six copies of the shipping record, form ABC-189, which is available on ABC's website at [www.ksrevenue.org/abc](http://www.ksrevenue.org/abc). [Subsection (a) of proposed K.A.R. 14-24-3]

The permit holder shall retain two copies of the shipping record, as follows:

- one copy to submit to the Director with its annual report at the end of the calendar year.
- one copy for possible future audit by the Director for a period of three years.

[Subsection (b) of proposed new K.A.R. 14-24-3]

The permit holder shall attach four copies of the shipping record to the outside of the shipment, for distribution as follows:

- one copy for the Kansas distributor to retain for its records for three years for possible future audit by the Director.
- one copy for the Kansas retailer to retain for its records for three years for possible future audit by the Director.
- one copy for the Kansas retailer to submit to the Director with its monthly Kansas Direct Wine Shipment Enforcement Tax Return - Retail Liquor Store (form ABC-185).
- one copy to be provided to the purchaser at the time the purchaser picks up the shipment from the Kansas retailer.

[Subsection (b) of proposed K.A.R. 14-24-3]

## **Shipping and delivery**

The permit holder shall ship the wine in its original unopened container to a licensed distributor in Kansas. [Subsection (b)(2) of K.S.A. 41-349]

The distributor shall deliver the wine to the retail liquor store designated by the purchaser at the time of purchase. [Subsection (b)(2) of K.S.A. 41-349] Delivery should be made with the distributor's next delivery to the retailer.

Upon receipt of the shipment, the retailer may open and inspect the contents to verify their completeness and condition. The retailer shall notify the purchaser to pick up the wine. The purchaser must pick up the wine within 30 days of when the retailer received it unless the parties agree otherwise. Wine not picked up by the purchaser in a timely manner shall be disposed of by the retailer

in accordance by rules and regulations approved by the Secretary of Revenue. [Subsection (e) of K.S.A. 41-349 and subsection (a) of proposed new K.A.R. 14-24-4]

When the purchaser picks up the wine, the retailer shall require the purchaser to provide photo identification to verify that the person picking up the wine is the same person who purchased it and is at least 21 years of age. The retailer may charge the purchaser up to a \$5 handling charge for each shipment and shall collect from the purchaser the 8% enforcement tax pursuant to KSA 41-4101. [Subsection (e) of K.S.A. 41-349]

The tax shall be calculated upon the total price paid by the purchaser, which includes the following:

- the purchase price and handling and shipping charges paid by the purchaser to the permit holder, as shown on the shipping record.
  - the handling charge paid by the purchaser to the retailer.
- [Proposed new K.A.R. 14-24-6]

One copy of the shipping record shall be given to the purchaser. The retailer shall retain two copies of the shipping record. The retailer will attach one copy to their monthly Kansas Direct Wine Shipment Enforcement Tax Return - Retail Liquor Store (form ABC-185) to be mailed to the Kansas Department of Revenue. The other copy will be retained by the retailer for three years and shall be subject to audit by the Department.

### **Disposition of wine shipment if damaged or purchaser fails or refuses to accept delivery**

If the purchaser fails to pick up the shipment after notification by the retailer, then the retailer must notify the Director in writing. The retailer will document in writing what efforts the retailer made to contact the purchaser. The Director or the Director's designee will pick up the wine shipment and the purchaser's copy of the shipping record and the wine shall become the property of the Director. In such case, the retailer will not receive a handling fee and no liquor enforcement tax shall be calculated or reported by the retailer. [Subsection (a) of proposed new K.A.R. 14-24-4]

If the purchaser refuses to take delivery of the shipment because the contents have been damaged or for any other reason, then the purchaser or retailer shall contact the permit holder and the purchaser, retailer and permit holder should try to mutually agree on how to resolve the situation. If they are unable to reach an agreement, then the purchaser, retailer or permit holder must contact the Director in writing and request a decision on how to resolve the situation. The decision of the Director is binding upon the purchaser, retailer and permit holder. If the decision of the Director does not result in the wine being delivered to the purchaser or returned to the permit holder, then the wine will become the property of the Director. In such case, the retailer will not receive a handling fee and no liquor enforcement tax shall be calculated or reported by the retailer. [Subsection (b) of proposed K.A.R. 14-24-4]

Wine which becomes the property of the Director will either be destroyed or be sold by the Director at public auction. Only licensed retail liquor stores may bid. The net proceeds from the auction will be deposited as liquor enforcement tax revenue as provided by K.S.A. 79-4108.

### **Filing of reports and payment of gallonage taxes by out-of-state permit holders**

Out-of-state permit holders shall file an annual report of sales and shipments into Kansas using the Direct Wine Shipping Permit Annual Report of Sales to Kansas Customers (form ABC-270). They shall also calculate and remit the gallonage tax on those sales in accordance with KSA 41-501 et seq. using the Direct Wine Shipping Permit Annual Gallonage Tax Return (form ABC-268). These forms can be found on ABC's website at <http://www.ksrevenue.org/abclireg.htm>. The permit holder shall complete the return and mail it with the tax due to the Director by January 15 following the end of each calendar year. One copy of each of the shipping records for that year shall be attached to the return until such time as the Department provides a means to submit this information electronically. [Proposed new K.A.R. 14-24-5]

The gallonage tax on wine is based upon the alcoholic content, as follows:

- 30 cents per gallon for wine containing 14% or less alcohol by volume
  - 75 cents per gallon for wine containing more than 14% alcohol by volume
- [Subsection (b)(1) of K.S.A. 41-501]

Out-of-state permit holders must allow the Kansas Director of Taxation (or designated agent) to perform an audit of their records relating to sales and shipments under this permit. [Subsection (b)(6) of K.S.A. 41-349]

### **Filing of reports and payment of liquor enforcement taxes by Kansas retail liquor stores**

Kansas retailers shall report the transactions and remit the 8% enforcement tax collected using the Kansas Direct Wine Shipment Enforcement Tax Return - Retail Liquor Store (form ABC-185). This form is available on the ABC website at <http://www.ksrevenue.org/abclireg.htm>.

### **Refusal to renew a permit or revocation of a permit**

The Director may revoke or refuse to renew an existing permit upon finding that the applicant has failed comply with any of the provisions of K.S.A. 41-349 or K.S.A. 41-501 et seq. or any rules and regulations adopted pursuant thereto, including the filing of required reports and payment of gallonage taxes due. In such case, the applicant has the right to request a hearing before the Director on the issues, to be conducted in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq. [Subsection (d) of K.S.A. 41-349]

## Appendix A - Statutes

**K.S.A. 41-348. Permit to ship wine, small wineries.** (a) Notwithstanding any other provision of law to the contrary, a person holding a valid farm winery license in this state or a person which holds a valid license authorizing the manufacture of wine in another state and which manufactures wine in a quantity not exceeding 100,000 gallons per year may sell and ship wine to a consumer in this state if the person holds a valid shipping permit issued by the director. Such permit may be obtained by filing with the director an application on a form prescribed by rules and regulations of the secretary of revenue and paying a permit fee of \$50 for an original permit and \$10 for a renewal permit and, if applicable, a true copy of the applicant's current beverage license authorizing the manufacture of wine in another state.

(b) Sale and shipment of wine pursuant to a shipping permit shall be subject to the following restrictions:

(1) The consumer to whom the permit holder sells and ships wine shall be at least 21 years of age and the wine must be for such consumer's personal use and not for resale;

(2) the purchaser shall pay the purchase price and all shipping costs directly to the permit holder;

(3) the wine shall be shipped in the original unopened container to a licensed retailer designated by the purchaser;

(4) the permit holder shall report annually to the director of taxation the total wine sold and shipped pursuant to this section during the preceding calendar year;

(5) if the wine is shipped from outside the state, the permit holder shall remit annually to the director all gallonage taxes due pursuant to K.S.A. 41-501 et seq., and amendments thereto, on sales to consumers in this state pursuant to this section during the preceding calendar year, the amount of such taxes to be calculated as if the wine were manufactured in this state; and

(6) if the permit holder is an out-of-state shipper, the permit holder shall allow the director of taxation to perform an audit of the out-of-state shipper's records upon request.

(c) If the holder of the permit is an out-of-state shipper, the permittee shall be deemed to have appointed the secretary of state as the resident agent and representative of the licensee to accept service of process from the secretary of revenue, the director and the courts of this state concerning enforcement of this section, K.S.A. 41-501 et seq., and amendments thereto, and any related laws and rules and regulations and to accept service of any notice or order provided for in the liquor control act. Acceptance of such service of process by the secretary of state shall be fully binding upon the permit holder.

(d) After notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, the director may refuse to issue or renew or may revoke a shipping permit upon a finding that the permit holder has failed to comply with any provision of this section or K.S.A. 41-501 et seq., and amendments thereto, or any rules and regulations adopted pursuant to such statutes.

(e) Wine sold and shipped by a person holding a shipping permit shall be delivered to the licensed premises of the licensed retailer designated by the purchaser during hours the retailer is authorized by law to sell alcoholic liquor. The retailer shall collect taxes with regard to such wine pursuant to K.S.A. 79-4101 et seq., and amendments thereto, in accordance with rules and regulations of the secretary, as if the sale were made in this state. The retailer may charge the purchaser a handling fee of not more than \$5 for each delivery of wine received by the retailer on behalf of the purchaser. The retailer shall ensure that the purchaser of the wine is 21 or more years of age. The purchaser shall be required to pay any amount due for taxes and the handling fee before the retailer releases the wine to the purchaser. The purchaser shall remove the wine from the retailer's licensed premises within 30 days after the retailer receives the wine or such other period of time as agreed upon by the retailer and the purchaser.

The secretary shall provide by rules and regulations for the method of disposition of such wine if the purchaser fails to remove it from the retailer's licensed premises within such time.

(f) Sale and shipment of wine in the manner provided by this section by a person who does not possess a valid shipping permit issued pursuant to this section is prohibited. Any person who knowingly makes, participates in, transports, imports or receives any wine in violation of this subsection is guilty of a class B misdemeanor.

(g) The secretary of revenue shall adopt rules and regulations to implement, administer and enforce the provisions of this section, including, but not limited to, rules and regulations regarding the transportation, acceptance, storage and delivery of wine pursuant to this section.

(h) This section shall be part of and supplemental to the Kansas liquor control act.

**History:** L. 2006, ch. 206, § 4; July 1.

**K.S.A. 41-349. Permit to ship wine, large wineries.** (a) Notwithstanding any other provision of law to the contrary, a person holding a valid license authorizing the manufacture of wine in another state and which manufactures wine in a quantity of 100,000 gallons or more per year may sell wine to a consumer in this state in accordance with this section if the person holds a valid large winery shipping permit issued by the director. Such permit may be obtained by filing with the director an application on a form prescribed by rules and regulations of the secretary of revenue and paying a permit fee of \$50 for an original permit and \$10 for a renewal permit together with a true copy of the applicant's current beverage license authorizing the manufacture of wine in another state.

(b) Sale and shipment of wine pursuant to a large winery shipping permit shall be subject to the following:

(1) The consumer to whom the permit holder sells wine shall be at least 21 years of age and the wine must be for such consumer's personal use and not for resale;

(2) the wine shall be shipped in the original unopened container to a licensed distributor, who shall deliver the wine to the licensed premises of the retailer designated by the consumer;

(3) the consumer shall pay the purchase price and all shipping costs directly to the permit holder and shall designate the retailer to whose licensed premises the wine is to be delivered by the distributor;

(4) the permit holder shall report annually to the director of taxation the total wine sold and shipped into the state pursuant to this section during the preceding calendar year;

(5) the permit holder shall remit annually to the director all gallonage taxes due pursuant to K.S.A. 41-501 et seq., and amendments thereto, on sales to consumers in this state pursuant to this section during the preceding calendar year, the amount of such taxes to be calculated as if the wine were manufactured in this state; and

(6) the permit holder shall allow the director of taxation to perform an audit of the out-of-state shipper's records upon request.

(c) The holder of a large winery shipping permit shall be deemed to have appointed the secretary of state as the resident agent and representative of the licensee to accept service of process from the secretary of revenue, the director and the courts of this state concerning enforcement of this section, K.S.A. 41-501 et seq., and amendments thereto, and any related laws and rules and regulations and to accept service of any notice or order provided for in the liquor control act. Acceptance of such service of process by the secretary of state shall be fully binding upon the permit holder.

(d) After notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, the director may refuse to issue or renew or may revoke a large winery shipping permit upon a finding that the permit holder has failed to comply with any provision of this section or K.S.A. 41-501 et seq., and amendments thereto, or any rules and regulations adopted pursuant to such statutes.

(e) Wine sold and shipped by a person holding a large winery shipping permit shall be delivered to a licensed distributor for delivery to the licensed premises of the licensed retailer designated by the consumer. The retailer shall collect taxes with regard to such wine pursuant to K.S.A. 79-4101 et seq., and amendments thereto, in accordance with rules and regulations of the secretary, as if the sale were made in this state. The retailer may charge the consumer a handling fee of not more than \$5 for each delivery of wine received by the retailer on behalf of the consumer. The retailer shall ensure that the consumer is 21 or more years of age. The consumer shall be required to pay any amount due for taxes and the retailer's handling fee before the retailer releases the wine to the consumer. The consumer shall remove the wine from the retailer's licensed premises within 30 days after the retailer receives the wine or such other period of time as agreed upon by the retailer and the consumer. The secretary shall provide by rules and regulations for the method of disposition of such wine if the consumer fails to remove it from the retailer's licensed premises within such time.

(f) No person shall sell and ship wine as provided in this section unless such person possesses a valid large winery shipping permit issued pursuant to this section. Any person who knowingly makes, participates in, transports, imports or receives any wine in violation of this subsection is guilty of a class B misdemeanor.

(g) The secretary of revenue shall adopt rules and regulations to implement, administer and enforce the provisions of this section, including, but not limited to, rules and regulations relating to transportation, acceptance, storage and delivery of wine shipped pursuant to this section.

(h) This section shall be part of and supplemental to the Kansas liquor control act.

**History:** L. 2006, ch. 206, § 6; July 1.



## **Appendix B - Proposed New Administrative Regulations**

The following new regulations are proposed and are not officially approved at this time. If you have suggestions for changes, please contact our attorney, Phil Wilkes, by phone at 785-368-8388, by fax at 785-296-7185, or by email at phil\_wilkes@kdor.state.ks.us

### **(Incorporating recommendations by Dept. of Administration as of 11/01/06)**

**14-24-1. Definitions.** As used in this article, unless the context clearly requires otherwise, the following terms shall have the meanings specified in this regulation:

(a) "Director" has the meaning specified in K.S.A. 41-102, and amendments thereto.

(b) "Large winery shipping permit" means a shipping permit issued pursuant to K.S.A. 41-349, and amendments thereto, to a wine manufacturer licensed in another state that manufactures at least 100,000 gallons of wine each year.

(c) "Small winery shipping permit" means a shipping permit issued pursuant to K.S.A. 41-348, and amendments thereto, to an entity that meets the following conditions:

(1)(A) Is a farm winery licensed in Kansas; or

(B) is a wine manufacturer licensed in another state; and

(2) manufactures no more than 100,000 gallons of wine per year.

(d) "Wine distributor" means any person licensed pursuant to K.S.A. 41-306a, and amendments thereto, to sell or offer for sale wine to any person authorized by law to sell wine at retail.

(e) "Winery shipping permit" means either a large winery shipping permit or a small winery shipping permit.

(Authorized by K.S.A. 41-348 and 41-349; implementing K.S.A. 2005 Supp. 41-308a, as amended by L. 2006, ch. 206, sec. 5; effective, P-\_\_\_\_\_.)

**14-24-2. Applications; information and documentation required.** (a) Each person who wants a winery shipping permit shall submit an application on a form approved by the director.

(b) Each wine manufacturer that is licensed in a state other than Kansas and wants a winery shipping permit shall submit, with the application, a photocopy of the wine manufacturer's current license from the state where the manufacturer is licensed to conduct business.

(Authorized by and implementing K.S.A. 41-348 and 41-349; effective, P-\_\_\_\_\_.)

**14-24-3. Shipping record to accompany each shipment of wine.** Each holder of a winery shipping permit shall complete a shipping record form approved by the director for each shipment of wine. The shipping record shall be distributed as follows:

(a) The permit holder shall retain the original with the permit holder's business records for at least three years and shall make the original shipping record and business records available for audit by the director or director's designee.

(b) The permit holder shall attach a copy to the annual report of sales filed with the director if the permit holder is located outside the state of Kansas.

(c) The permit holder shall attach the following copies to the outside of the shipment:

(1) Two copies for the Kansas retailer. The retailer shall submit one copy with the retailer's liquor enforcement tax return. The retailer shall retain the other copy for at least three years and shall make the copy available for audit by the director or the director's designee;

(2) one copy to be given to the purchaser when the purchaser picks up the shipment from the retailer; and

(3) one copy for the Kansas distributor if the shipment is made through a Kansas distributor. The distributor shall retain this copy for at least three years and shall make the copy available for audit by the director or the director's designee.

(Authorized by and implementing K.S.A. 41-348 and 41-349; effective, P-\_\_\_\_\_.)

**14-24-4. Disposition of wine shipment not removed from retailer's premises.** (a) The retailer shall notify the purchaser upon receipt of the wine shipment ordered by the purchaser. If the purchaser fails to pick up the wine shipment and pay the handling fee and liquor enforcement tax due pursuant to statute, the retailer shall notify the director. The wine shipment and the shipping record shall be picked up by the director or the director's designee and shall become the property of the director. The retailer shall document in writing the efforts the retailer made to contact the purchaser. The retailer shall not be entitled to a handling fee, and no liquor enforcement tax shall be calculated or reported by the retailer.

(b) If the purchaser refuses to take delivery of the shipment because of damage to the contents or for any other reason, the purchaser or retailer shall contact the permit holder. The purchaser, retailer and permit holder shall be required to mutually agree on how to resolve the situation. If these parties are unable to reach an agreement, then the purchaser, retailer or permit holder shall contact the director in writing and request a decision on how to resolve the disagreement. The decision of the director shall be binding upon the purchaser, retailer and permit holder. If the wine shipment is not delivered to the purchaser and is not returned to the permit holder, the wine shipment shall become the property of the director. The retailer will not receive a handling fee and no liquor enforcement tax shall be calculated or reported by the retailer if the wine shipment becomes the property of the director.

(c) Wine that has become the property of the director as specified in subsections (a) and (b) shall, at the discretion of the director, be either destroyed or sold at auction. Wine sold at auction may be purchased only by a retailer licensed under the Kansas liquor control act. The proceeds from the auction, after payment of all applicable auction expenses, shall be deemed liquor enforcement tax revenue and deposited pursuant to K.S.A. 79-4108, and amendments thereto.

(Authorized by and implementing K.S.A. 41-348 and 41-349; effective, P-\_\_\_\_\_.)

**14-24-5. Gallonage tax returns and payments by out-of-state permit holders.** Each out-of-state permit holder shall annually submit the following to the director on or before January 15 of the next calendar year:

(a) A tax return reporting all shipments subject to the gallonage tax, on forms approved by the director.

(b) payment of the gallonage tax on all shipments.

(Authorized by and implementing K.S.A. 41-348 and 41-349; effective, P-\_\_\_\_\_.)

**14-24-6. Calculation and payment of the liquor enforcement tax.** (a) Each Kansas retailer shall calculate and collect from the purchaser the liquor enforcement tax on each wine shipment when the shipment is delivered to the purchaser. The liquor enforcement tax shall be calculated on the total charges paid by the purchaser to both the holder of the winery shipping permit and the retailer, including the following charges:

(1) The price of the wine and all handling and shipping charges paid to the permit holder, as shown on the shipping record; and

(2) the handling charge paid to the retailer.

(b) The retailer shall identify the total amount of tax collected on each shipment and remit this amount to the Kansas department of revenue pursuant to K.S.A. 79-4106, and amendments thereto.

(Authorized by and implementing K.S.A. 41-348 and 41-349; effective, P-\_\_\_\_\_.)

**14-24-7. Report of sales by permit holders.** (a) Each in-state permit holder shall report information about the permit holder's sales each month to the director on forms approved by the director. Each report shall be due on or before the 15th day of the month following the end of each month.

(b) Each out-of-state permit holder shall annually report information about the permit holder's sales to the director on forms approved by the director. Each report shall be due on or before January 15 of the next calendar year.

(Authorized by and implementing K.S.A. 41-348 and 41-349; effective, P-\_\_\_\_\_.)