

Colorado Wine Industry Thoughts on what constitutes “Produce” for the calculation of the Wine Development Excise Tax

The Colorado Liquor Code requires a \$10 per ton excise tax be paid by all licensed Colorado wineries and vintner’s restaurants on grapes and other produce used in the production of wine in Colorado. (C.R.S. 12-47-503, emphasis added)

(1)(c) An excise tax of ten dollars per ton of grapes is imposed upon all grapes of the vinifera varieties or other produce used in the production of wine in this state by a licensed Colorado winery or vintner's restaurant, whether true or hybrid. The excise tax imposed pursuant to this paragraph (c) shall be paid to the department of revenue by the licensed winery or vintner's restaurant at the time of purchase of the product by the winery or vintner's restaurant or of importation of the product, whichever is later. An amount equal to one hundred percent of such excise tax shall be transferred from the general fund to the Colorado wine industry development fund created in section 35-29.5-105, C.R.S. Such transfers shall be made by the state treasurer as soon as possible after the twentieth day of the month following the collection of such excise tax.

The Colorado Wine Industry Development Board (CWIDB) is asking the Taxpayer Services Division and the Liquor Enforcement Division of the Colorado Department of Revenue (DOR) to clarify what ingredients used to make wine are subject to the tax. As many wineries use grape or fruit juice, commercial concentrates, frozen produce or juice and other forms of “produce” to make wine (i.e., apples, cherries, peaches, etc.), the CWIDB is asking the DOR to make clear to manufacturers of vinous liquors in Colorado that this excise tax is payable on all produce whether it is from grapes, other fruits and/or honey; whether it comes from Colorado, or another state; and whether it comes in a fresh, frozen or otherwise processed state. Essentially the tax should be paid on all raw materials from produce that go into wine made in Colorado.

Colorado Revised Statutes Title 12, Article 47 defines vinous liquors or wine as follows:

(39) "Vinous liquors" means wine and fortified wines that contain not less than one-half of one percent and not more than twenty-one percent alcohol by volume and shall be construed to mean an alcohol beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar. **(C.R.S. 12-47-103)**

This definition requires that wine be made from agricultural products that naturally contain sugar. The Agriculture Statutes explain that agriculture means

the science and art of production of plants and animals useful to man, including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products and farm production. **(C.R.S. 35-1-102)**

As the Liquor Code does not include a specific definition of “other produce” as it applies to the wine development excise tax as quoted above, a common sense approach to the meaning of the term and the breadth of its application is necessary in this context.

The CWIDB makes the following assertions:

- ❖ “Produce” is included in the language of 12-47-503 (1)(c) as the excise tax is meant to be assessed on more than just grapes--also on any agricultural products used to make vinous liquors (wine).
- ❖ The Agriculture statutes include not only grapes (viticulture) but also tree fruit and other fruits (horticulture) and honey (bee) as agricultural products, all of which would naturally contain fermentable sugar.
 - Other ingredients used to flavor wine, such as lavender, would also be agricultural products, under floriculture in the example cited.
- ❖ Furthermore, the agriculture statute includes any and all forms of farm products under the umbrella of agricultural products.

Based on the above assertions and definitions, the Colorado wine industry and the CWIDB request that the Department of Revenue adopt the following policies for calculating the payment of grape and produce tax on line 19, form DR-0442 pursuant to 12-47-503 (1)(c):

- 1) The grape/produce tax is payable on all grapes, fruits, honey and other agricultural products used to make vinous liquors in Colorado by a licensed Colorado winery.
 - a) The tax is due on all produce whether it is from grapes, other fruits (including but not limited to apples, apricots, blackberries, blueberries, cherries, chokecherries, cranberries, elderberries, huckleberries, peaches, pears, plums, pomegranates, raspberries, or strawberries), or other agricultural products (i.e., lavender, rhubarb, etc.)
 - b) The tax is due on all produce whether grown in Colorado or purchased from an out-of-state producer and imported into Colorado.
 - c) The tax is due on all produce used to make wine no matter what form the produce comes in. This includes but is not limited to fresh or frozen juice, frozen produce, concentrate, extract or any other form of processed produce.
 - d) For juice, liquid or frozen concentrate, honey and other forms of produce in liquid or semi-liquid form, the \$10/ton can be converted to \$0.016/ltr of the juice, reconstituted concentrate, honey diluted to a fermentable level based on the volume to be used for fermentation.
- 2) Hard cider producers are specifically exempted from paying the wine development fees and excise taxes described in CRS 12-47-503 (1)(b)(II-III). As hard cider is not exempted from the grape and produce tax described in 12-47-503 (1)(c), all apples, pears and any other form of those fruits used to make hard cider, whether grown and processed in Colorado or outside the state, are subject to the \$10/ton tax or the volume equivalency described in (1)(d) above.

Questions to address:

1. Are purchases of bulk wine used to make Colorado wine exempt from this tax?
 - a. If the bulk wine was made by a Colorado winery, the grape/produce tax would have already been paid by the manufacturing winery. The wine should not be double taxed.
 - b. If the bulk wine came from a winery outside the state, it would probably be exempt from the tax, as any grape or produce used to make that wine was not used by a licensed Colorado winery.

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2. Should the final rule or bulletin explicitly mention limited wineries, manufacturer wineries and vintner's restaurants?