

PETITION TO INITIATE RULEMAKING
OREGON LIQUOR CONTROL COMMISSION

PETITION TO ADOPT RULES)
OAR 845-010-0xxx)
Wine Privilege Tax Process for Small Producers)

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1. **Petitioner:** Oregon Winegrowers Association
1200 NW Naito Parkway, Suite 400
Portland, Oregon, 97209-2829
2. **Petitioner notes that there is no instance in which Oregon wine privilege tax may be levied, collected, or imposed upon an Oregon manufacturer of wines producing less than 40,000 gallons annually.** Pursuant to Oregon Revised Statutes (ORS) Section 473.050(5), no Oregon wine privilege tax shall be levied, collected or imposed upon the first 40,000 gallons of wine sold annually in Oregon from a United States manufacturer of wines producing less than 100,000 gallons annually. (Eligibility for the exemption under ORS 473.050(5) is determined pursuant to the recently adopted OAR 845-010-0154.) Additionally, pursuant to ORS 473.050(2), no tax shall be levied, collected, or imposed upon any wine exported from the state. Even Oregon wineries which may be producing more than 40,000 gallons annually (but less than 100,000 gallons annually) also are unlikely to be subject to any Oregon wine privilege tax unless their sales are predominantly in Oregon (i.e., greater than 40,000 gallons sold in Oregon each year).
3. **Petitioner further notes that the Oregon legislature has intended for the Commission to minimize tax-related administrative burdens upon Oregon's small manufacturers of wines.** Pursuant to ORS 473.065(4), when a manufacturer of wines reasonably expects no liability for privilege taxes and does not present an unusual risk for nonpayment of any license fees, privilege taxes, agricultural products taxes, or other tax, penalty or interest, the Commission shall waive the bond requirements otherwise required of Oregon winery licensees under ORS 471.155(1). Additionally, pursuant to ORS 473.070(2), manufacturers of wines that do not expect to be liable for any privilege tax may file a single annual statement of the quantity of wine produced, purchased or received in lieu of the monthly reports otherwise required under ORS 473.070(1).
4. **Petitioner understands that Commission staff has determined that in the absence of an administrative rule to the contrary, ORS 473.060(1) nonetheless requires all licensees (even an Oregon manufacturer of wines producing less than 40,000 gallons annually) to file monthly statements and pay privilege taxes on or before the 20th day of each month after such wines have been withdrawn from federal bond, unless such wines were sold in Oregon or for export from the state within the same monthly period.** Petitioner respectfully disagrees with this determination.

Nonetheless, Petitioner notes that under such circumstances, the winery licensees then must subsequently (upon sale in Oregon or for export from the state) present a claim for the Commission to review and process a refund in the full amount of those privilege taxes previously paid but for which there is no privilege tax liability intended to be owing under ORS 473.050(2) and (5). Petitioner further notes that ORS 473.060(1) would otherwise require monthly tax payments on or before the 20th day of the month after wines have been withdrawn from federal bond, but only for “taxes covering the periods for which statements are required to be rendered by ORS 473.070...” Therefore, since ORS 473.070(2) indeed already provides for annual reporting where there is no tax liability expected, similarly intervening monthly tax payments should not be required merely because of the removal of wines from federal bond.

5. **Petitioner asserts that the Commission should exercise its authority to enable more efficient practices among the Commission’s Financial Services staff and to minimize unnecessary administrative burdens upon small Oregon winery licensees for which no net privilege tax liability is reasonably expected.** ORS 473.020 provides that the Commission shall make such rules and regulations as it deems necessary to enforce the provisions of ORS Chapter 473. ORS 473.060(1) also directly enables the Commission to waive the collection of any tax imposed on wine exported from this state.

6. **Petitioner proposes that the Commission adopt the following rule:**

OAR 845-010-0xxx. The Commission shall not require monthly statements, and shall waive the monthly collection of taxes upon wines which have been withdrawn from federal bond and not yet sold, but which will be subject to refund under ORS 473.050(2) or (5), from: (a) manufacturers of wine that had no net liability for any privilege tax under ORS Chapter 473 in the prior calendar year and that do not expect any net liability for such tax under the current calendar year, and (b) manufacturers of wine that are newly established during the current calendar year and that do not expect any net liability for privilege tax under ORS Chapter 473 in the current calendar year.


7. **As described above, the foregoing rule would be consistent with prior expressions of legislative intent in ORS 473.050(2) and (5), ORS 473.065(4), and ORS 473.070(2).**
8. **The proposed rule would reduce reporting, recordkeeping, and other administrative activities and the costs of associated professional services for small businesses, and for the Commission.**
9. **Upon adoption of the rule, Petitioner requests the Oregon Liquor Control Commission to promptly disseminate informal policy guidance as to when and**

under what circumstances wine production statements and privilege tax payments will be required.

10. Petitioner is not aware of any parties, other than Oregon winery licensees, which may have a particular interest in the proposed amendment. There will be no harm to the public as a result of the proposed rule.

Wherefore, Petitioner requests the Oregon Liquor Control Commission to adopt the proposed rule.

Oregon Winegrowers Association


by Jesse D. Lyon, General Counsel
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Date 1/16/09