County Technical Assistance Service

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Beer

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Beer
Reference Number: CTAS-333

Definition of Beer
Reference Number: CTAS-334

The transportation, storage, sale, distribution, possession, and manufacture of "beer" in Tennessee is regulated under the statutes set out in *Tennessee Code Annotated*, Title 57, Chapter 5. "Beer" is defined as "beer, ale or other malt beverages **having an alcoholic content of not more than eight percent (8%) by weight**, except wine as defined in T.C.A. § 57-3-101(a)(24); provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol." T.C.A. § 57-5-101. The statutory definition of "beer" is based on alcoholic content, so that any beverage containing the percentage of alcohol set out in the statutory definition is regulated under these statutes regardless of the identity of the fruit or grain used to produce it. Attorney General Opinion 94-75 (7/8/94) (refers to older statute which defined beer as 5% alcohol or less). All references to "beer" herein refer to the statutory definition.

All businesses engaged in the sale, distribution, manufacture and storage of beer are required to obtain a permit from the county or city where the business is located. T.C.A. § 57-5-103.

Wine and alcoholic beverages having more than eight percent (8%) in alcoholic content are not regulated locally, but are regulated at the state level by the Tennessee Alcoholic Beverage Commission (“ABC”). T.C.A. §§ 57-3-104, 57-4-201. These beverages may not be sold unless the city or county has authorized their sale by local referendum. T.C.A. § 57-3-102. Once such a referendum has passed, permits are issued by the ABC. T.C.A. § 57-3-104.

Classification of Counties
Reference Number: CTAS-335

Tennessee counties are classified into two categories for the purpose of licensing, regulating and controlling the transportation, storage, sale, distribution, possession, receipt and manufacture of beer. Class A includes all counties which are not governed by metropolitan governments. Class B includes those counties which are governed by metropolitan governments (currently, only Davidson, Moore, and Trousdale counties). T.C.A. § 57-5-103(b).

Authority of Cities and Class B (Metropolitan Government) Counties
Reference Number: CTAS-336

Cities and Class B counties are authorized to pass ordinances governing the issuance and revocation or suspension of licenses for the storage, sale, manufacture and distribution of beer within their corporate limits, and within the general services district of Class B counties outside the limits of any smaller cities. Cities and Class B counties may impose restrictions in addition to those set out by statute, fix zones and territories, provide hours of operation and impose other rules and regulations to promote public health, morals and safety. Cities and Class B counties may authorize the sale of beer in hotel and motel rooms and in clubs and lodges. T.C.A. § 57-5-106. Cities and Class B counties have extensive authority to regulate the sale of beer, which includes the authority to limit the number and location of retail outlets. See, e.g., State ex rel *Amvets Post 27 v. Beer Board*, 717 S.W.2d 878 (Tenn. 1986). The powers of cities and Class B counties to regulate the sale of beer extends even to the extent of prohibition. Ketner v. Clabo, 225 S.W.2d 54 (Tenn. 1949). Cities and Class B counties may establish different distance requirements for the sale of beer in different, well-defined sections of their jurisdictions. Attorney General Opinion 02-092 (8/28/02).

Authority of Class A Counties
Reference Number: CTAS-337

Tennessee Code Annotated § 57-5-105 sets out the requirements an applicant must meet in order to obtain a beer permit from a Class A county. This statute also sets out the limited power of a Class A county to impose restrictions on the issuance of permits. The Tennessee Supreme Court has summarized the lack of authority of Class A counties to impose any additional conditions or restrictions as follows:

> A county beer board must issue a license to anyone who meets the requirements laid out in this section, and they may not prescribe conditions for the issuance of a permit in addition to those set out in the statute. Howard v. Willocks, 525 S.W.2d 132 (Tenn. 1975).

Class A counties must look exclusively to the statutes and the case law explaining the statutes to determine the limits of their authority to regulate the issuance and revocation of permits to sell beer. Attorney General Opinion U91-51 (4/9/91). Class A counties have no authority to set any requirements in addition to those contained in the statutes. For example, the Attorney General has opined that a Class A county has no authority to prohibit the sale of cold beer at convenience stores and grocery stores. Attorney General Opinion 05-024 (3/14/05).

Class A counties are authorized to review applications for beer licenses and must grant any application which meets the statutory requirements. T.C.A. § 57-5-105(e). The statutes allow county legislative bodies to adopt resolutions establishing "distance rules" which prohibit the issuance of a permit for an establishment to sell beer within 2,000 feet of schools, churches or other places of public gathering, or prohibit the sale of beer within 300 feet of residential dwellings in accordance with the guidelines outlined in the statute. Class A counties also may refuse to issue a beer permit if the issuance would interfere with public health, safety, and morals. T.C.A. § 57-5-105(b)(1).

The County Beer Board
Reference Number: CTAS-338

The county legislative body may, but is not required to, appoint a committee (known as the “beer board”) to administer the laws relating to the sale of beer in the county. If the county legislative body does not appoint a beer board, the county legislative body acts as the beer board. The beer board is authorized to act on behalf of the county in all matters relative to the administration of the beer laws. However, the county legislative body retains the sole authority to adopt distance rules or to extend hours for the sale of beer. T.C.A. § 57-5-105. A county beer board has the same discretionary power in the issuance and revocation of beer permits as the county legislative body which appoints it. Attorney General Opinion 82-325 (6/24/82). Sample resolution establishing a beer board.

Board Membership
Reference Number: CTAS-339

The statutes do not establish who will serve on the beer board, how many members the board will have, a term of office for board members or whether the members of the board will be compensated for their time. If the county legislative body chooses to establish a county beer board, there should be a resolution of the county legislative body setting out specific information concerning the appointment procedure, qualifications of members, term of office, compensation and other necessary guidelines for the board. A county beer board serves at the will and pleasure of the county legislative body which appointed it; therefore, the county legislative body has the power to discharge the board and replace its members. Attorney General Opinion 82-325 (6/24/82). While there is no prohibition against a member of a county beer board obtaining or holding a license to sell beer, the Attorney General has opined that it is “undesirable” for a beer board member to obtain a beer permit as it presents an appearance of impropriety. Attorney General Opinion 84-209 (6/27/84).

Board Authority

Reference Number: CTAS-340

Once appointed, the county beer board may exercise the same discretion as the county legislative body to grant, deny, suspend or revoke permits to sell beer, and to impose civil penalties, within the limits of the authority granted by the statutes (and any distance rules or extended hours of operation which may have been established by resolution of the county legislative body). In discussing the exercise of such discretion, the courts make no distinction between the county legislative body and the county beer board. State *ex rel*. Simmons v. Latimer, 186 Tenn. 577, 212 S.W.2d 386 (1948). However, the beer board is not authorized to establish distance rules or to extend the hours for the sale of beer; this authority may be exercised only by resolution of the county legislative body. T.C.A. § 57-5-105.

The county legislative body is authorized to impose training or certification restrictions or requirements on employees of beer permit holders. Only the county legislative body, and not the beer board, is authorized to impose these requirements. These requirements cannot be applied to any employee who holds a valid server permit issued by the ABC under Title 57, Chapter 3, Part 7 (the Alcohol Server Responsibility and Training Act of 1995). T.C.A. § 57-5-105(j). Once these requirements have been established by resolution of the county legislative body, the beer board has the authority to administer the provisions of the resolution within the limits of the authority granted by the resolution. However, counties have no authority to impose a tax or fee on servers or sellers of beer, for training or for any other purpose, except as expressly provided by state law. Attorney General Opinions U96-009 (2/8/96) and 97-077 (5/21/97).

A county beer board has the authority to conduct investigations of beer permit holders. In an unpublished opinion of the Tennessee Court of Appeals, the court found that a beer board was empowered to employ an undercover investigator after the county sheriff had refused to conduct an investigation concerning illegal sales of beer to minors. Jackson v. Franklin County Beer Board, 1993 WL 46524 (Tenn. Ct. App. 1993). Relying on this opinion, the Attorney General also opined that the beer board may hire a private investigatory firm to conduct undercover investigations concerning the sale of beer to minors, and that minors may be used in these investigations. Attorney General Opinion 01-062 (4/20/01).

Beer Permits

Reference Number: CTAS-341

It is unlawful to operate any business engaged in the sale, distribution, manufacture or storage of beer without first obtaining a permit from the city or county in which the business is located. The county issues permits only to businesses located in the unincorporated areas of the county; cities are responsible for issuance of permits to businesses located within any incorporated areas. T.C.A. §§ 57-5-105, 57-5-106. No city or county permit is required for a wholesaler unless the wholesaler operates a warehouse in the city or county. T.C.A. § 57-5-103. Selling, distributing, manufacturing, or storing beer without the required permit is a Class C misdemeanor. T.C.A. § 57-5-303. Sample Beer Permit

There are exceptions --

(1) caterers licensed by the Alcoholic Beverage Commission, in accordance with T.C.A. § 57-4-101(i) and 57-4-203(i)(3), are authorized to sell beer and other alcoholic beverages in conjunction with their catering services;

(2) retail liquor store owners licensed under T.C.A. § 57-3-204 are permitted to sell beer and other malt beverages without obtaining a beer permit from the county or city, and these beer sales are regulated by the ABC under T.C.A. § 57-3-404(e);

(3) a beer permit is not required for the making of "homemade beer" when it is done in accordance with the provisions of T.C.A. § 57-5-111; and

(4) under T.C.A. § 57-3-224, delivery services that deliver prepared food from restaurants may obtain a delivery service license issued by the ABC to deliver sealed packages of beer and alcoholic beverages; drivers must be licensed by the ABC under T.C.A. § 57-3-225.

Permits - To Whom Issued

Reference Number: CTAS-342

Beer permits are issued to the owner of the business or other entity responsible for the premises for which the permit is sought, whether a person, firm, corporation, joint-stock company, syndicate, association, or a local governmental entity when the governing body has authorized such sales of beer. A permit is valid only for the owner to whom it is issued, and it cannot be transferred to another owner. When the owner is a corporation, a change in ownership (necessitating a new permit) occurs when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner. T.C.A. § 57-5-103(a). A beer permit does not transfer by corporate merger. Mapco Petroleum, Inc. v. Basden, 774 S.W.2d 598 (Tenn. 1989). Similarly, permits are valid only for the business operating under the name identified in the permit application. T.C.A. § 57-5-103(a)(2)(C). If the name of the business changes, a new permit must be obtained.

Permitted Location

Reference Number: CTAS-343

A permit is valid only for a single location, which includes all decks, patios, and other outdoor serving areas contiguous to the location. If an owner operates two or more restaurants or other businesses within the same building, the owner may, in the owner's discretion, operate some or all of the businesses under the same permit. Permits are not transferable from one location to another. T.C.A. § 57-5-103(a).

Under this statute, a beer permit issued for a clubhouse or restaurant on a golf course does not allow the permit holder to sell beer on the golf course itself because the golf course, while it may be contiguous, does not constitute an "outdoor serving area" within the meaning of the statute. Attorney General Opinion 01-117 (7/24/01).

A beer board could, in its discretion, issue an on-premises beer permit to a golf course, thereby allowing the sale of beer within the confines of the golf course property. Or, if a golf course clubhouse has been issued an off-premises permit, a patron could purchase beer in the clubhouse and take it onto the golf course to drink it. Also, a beer board may issue a permit to an applicant for an outdoor event that is not contiguous to the applicant's building. Attorney General Opinion 08-09 (1/18/08).

Beer permit holders may sell beer online for curbside pickup at the permit holder's location. The beer must be delivered to a vehicle located within a paved parking area adjacent to the permitted business, and the beer must be pulled from the retailer's inventory at the permitted location. The employee delivering the beer to the vehicle must confirm that the individual receiving the beer is at least twenty-one (21) years of age. T.C.A. § 57-5-103(a).

On-Premises or Off-Premises Consumption

Reference Number: CTAS-344

A business may sell beer for both on-premises and off-premises consumption under the same permit. T.C.A. § 57-5-103(a)(5). However, a permit is not valid for on-premises consumption unless the application so states. T.C.A. § 57-5-105(b)(5). If a permit holder for either off-premises or on-premises consumption wishes to change the method of sale, the permit holder must apply for a new permit. T.C.A. § 57-5-105(c)(8).

Class A counties which have adopted distance rules cannot draw a distinction between on-premises consumption of beer as opposed to off-premises consumption in the calculation of the minimum footage requirements. Attorney General Opinions U93-74 (6/17/93) and 01 157 (10/25/01). However, cities and Class B (metropolitan government) counties may set different requirements for businesses selling beer for on-premises consumption versus those selling for off-premises consumption. See Attorney General Opinion 02-092 (8/28/02).

Microbreweries and Brew Pubs

Reference Number: CTAS-345

Under T.C.A. § 57-5-101(a), brewers and wholesalers are prohibited from having any interest in the retail beer business; a brewer cannot sell beer at retail or operate a restaurant at which it sells its own beer. However, an exception to this rule allows a manufacturer in any county in Tennessee who meets necessary federal, state, and local licensing requirements to operate as a retailer at or contiguous to the manufacturer's location for sales of not more than 25,000 barrels per year for consumption on or off the premises, in accordance with the provisions of T.C.A. § 57-5-101(c); Attorney General Opinion 00-087 (5/5/00).

A business engaged in the sale and manufacturing of beer must obtain a permit from the city or county in which the business is located. T.C.A. § 57-5-103. Also, note that beer falls within the definition of food as defined in T.C.A. § 53-1-102, and therefore manufacturing beer is subject to regulation by the Tennessee Department of Agriculture. Accordingly, these establishments must also obtain a food manufacturing license from the Department of Agriculture.

Temporary Beer Permits

Reference Number: CTAS-346

Temporary beer permits, not to exceed thirty (30) days, may be issued at the request of an applicant, upon the same conditions governing permanent permits. However, a temporary permit cannot be issued to authorize the sale, storage or manufacture of beer on publicly owned property (except in Class B counties and counties with a population over 300,000 by a bona fide charitable or nonprofit political organization with the approval of the appropriate governmental authority charged with the management of the property and the approval of the county beer board). T.C.A. § 57-5-105(g).

Beer Permit Application

Reference Number: CTAS-347

The owner of a business desiring to sell, distribute, manufacture or store beer in a Class A county outside the limits of any incorporated town or city must file an application for a permit with the county beer board. T.C.A. § 57-5-105. The application must be filed by the owner of the business, and it must contain the following information as set out in T.C.A. § 57-5-105(c):

1. Name of the applicant (the owner of the business);
2. Name of the business;
3. Location of the business by street address or other geographical description sufficient to determine conformity with applicable requirements;
4. If the applicant desires to sell beer at two or more restaurants or other businesses within the same building under the same permit, a description of each of the businesses;
5. All persons, firms, corporations, joint-stock companies, syndicates or associations having at least a five percent (5%) ownership interest in the applicant (owner of the business);
6. Identity and address of a representative to receive annual tax notices and any other communication from the county beer board;
7. That no person, firm, joint-stock company, syndicate or association having at least a five percent (5%) interest in the applicant nor any person to be employed in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years;
8. Whether the applicant is applying for a permit which would allow the sale of beer for either on-premises consumption or for off-premises consumption, or both;
9. Any other information as may reasonably be required by the county beer board.

Sample Beer Permit Application

An applicant (and a permit holder) is required to amend or supplement the application promptly if a change in circumstances occurs which would affect the responses given in the application. T.C.A. § 57-5-105(c)(9). Any applicant who makes a false statement in the application shall forfeit the applicant's permit and shall not be eligible for a permit for a period of ten (10) years. T.C.A. § 57-5-105(d).

In order to receive a permit, an applicant also must establish that:

1. No beer will be sold except at places where the sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise interfere with public health, safety and morals (and if the county legislative body has adopted a distance rule by resolution, that the business is not in violation of the rule). T.C.A. § 57-5-105(b)(1).
2. No sale will be made to minors. T.C.A. § 57-5-105(b)(2).
3. That no person, firm, corporation, joint-stock company, syndicate or association having at least a five percent (5%) ownership interest in the business has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance or controlled substance analogue, or any crime involving moral turpitude within the past ten (10) years. T.C.A. § 57-5-105(b)(3).
4. No person employed by the applicant in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance that is listed in Schedules I through V in title 39, chapter 17, part 4, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance analogue, or any crime involving moral turpitude within the last 10 years. T.C.A. § 57-5-105(b)(4).
5. That no sales for on-premises consumption will be made unless the application so states. T.C.A. § 57-5-105(b)(5).

Crimes involving moral turpitude refer to acts of baseness, vileness, or depravity in the private and social duties which a person owes to other persons or to society in general, contrary to the accepted rules of right and duty. Brooks v. State, 187 Tenn. 67, 213 S.W.2d 7 (1948). Crimes of rolling high dice for a Coke and failing to immediately release 17 bluegills are not crimes involving moral turpitude. Gibson v. Ferguson, 562 S.W.2d 188 (Tenn. 1976). Driving under the influence (DUI) and reckless driving are not considered crimes of moral turpitude. Attorney General Opinions 95-37 (4/19/97) and 08-108 (5/14/08). The sale of beer to a minor or to a person not presenting proper identification is not a crime of moral turpitude. Attorney General Opinion 09-41 (3/25/09) (however, this would be a violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages). The offense of vehicular homicide, on the other hand, is a crime of moral turpitude. Attorney General Opinion 98 225 (12/1/98). In Opinion No. 08-108 (5/14/08), the Attorney General discusses the law on moral turpitude in detail and lists other behavior that has been held to constitute moral turpitude.

In addition to the requirements listed above, all beer permit holders are required to provide the county with documentation that they are duly registered with the Commissioner of Revenue for sales tax purposes. A new permit holder must provide this documentation within ten (10) days following approval of the permit. The required documentation is an actual copy of the registration certificate indicating that the purchase of beer is “for resale” by the beer permit holder. Permit holders are required to maintain a copy of a valid resale certificate on file with the county. T.C.A. § 57-5-103. Persons engaging in the manufacture or wholesale distribution of beer are also required to register with the Commissioner of Revenue and receive a certificate of registration, which must be posted at the location prior to commencement of any business. T.C.A. § 57-5-102.

A 2015 amendment to T.C.A. § 57-5-103(a) provides that a beer permit cannot be issued to an applicant who has not been a citizen or lawful resident of the United States for at least one year immediately prior to the date of the application. However, the constitutionality of this provision has been called into question by the Tennessee Attorney General in Opinion No. 16-09 (3/4/16).

Application Fee for Beer Permit

Reference Number: CTAS-348

Each applicant is required to pay an application fee of $250 to the county or city in which the business is located prior to consideration of an application to sell beer. No portion of this fee can be refunded to the applicant regardless of whether the application is approved or denied. T.C.A. § 57-5-104(a).

An annual privilege tax is imposed on the business of selling, distributing, storing or manufacturing beer in Tennessee in the amount of $100 per year, which is due each January 1. At the time a new permit is issued, the permit holder is required to pay this tax on a prorated basis for each month or portion of a month remaining until the next payment date. T.C.A. § 57-5-104(b)(5).

Background Checks
Reference Number: CTAS-349

The beer board may wish to request background checks on applicants for a beer permit. Under T.C.A. § 57-5-103(e), a city or county is authorized to seek criminal history background or fingerprint checks on applicants for beer permits. These criminal background checks may include fingerprint checks against state and federal criminal records maintained by the Tennessee bureau of investigation and the federal bureau of investigation. The Tennessee bureau of investigation is authorized to assess fees for the searches in accordance with the fee schedule established by the bureaus. Also, criminal history information (intrastate) may be obtained from the Tennessee Bureau of Investigation for a fee of $29.00 per name submitted, under T.C.A. § 38-6-120. Because no statutory authorization exists for requiring the applicant to pay these fees, the beer board cannot recover the fee from the applicant. Attorney General Opinion 97-077 (5/21/97).

Public Notice of Applications and Hearings
Reference Number: CTAS-351

Meetings at which the county beer board considers applications for permits must be public hearings at which members of the public and their attorneys are allowed to speak. T.C.A. § 57-5-105(f). Under the Open Meetings Act ("Sunshine Law"), adequate public notice of the meeting must be given. T.C.A. § 8-44-103. Before issuing a permit, the beer board is authorized to publish a notice in a newspaper of general circulation in the county stating the name of the applicant, the address of the location, whether the application is for on-premises or off-premises consumption, and the date and time of the meeting at which the application will be considered. T.C.A. § 57-5-105(f). The minutes of the meeting must be recorded and open to public inspection, and all votes of the beer board must be by public vote, public ballot, or roll call. T.C.A. § 8-44-104.

Denial of Beer Permits
Reference Number: CTAS-352

A beer permit application may be denied for failure of the applicant to meet the statutory requirements discussed above. While cities and Class B counties can impose additional restrictions under T.C.A. § 57-5-106, Class A counties are required to grant any application which meets the statutory requirements set out in T.C.A. § 57-5-105.

A beer board may not avoid issuing a permit by simply refusing to take action on the application. If a board needlessly prolongs an application for a permit by tabling it, the board has in effect denied the application and the applicant is entitled to seek judicial review. McCarter v. Goddard, 609 S.W.2d 505 (Tenn. 1980).

Counties may deny a permit if the issuance would interfere with public health, safety, and morals. T.C.A. § 57-5-105(b)(1). The case law which has developed on the issue of whether issuing a beer permit would interfere with the public health, safety, and morals of a community limits the discretion of the beer board in most instances. A permit cannot be denied based on a generalized belief that the sale of beer is detrimental to the public health, safety and morals. For instance, it has been held that where all the requirements for issuance of a permit are met, a beer permit cannot be denied by a county beer board based on a board members' philosophy that:

> the sale and consumption of beer destroys the home, creates poverty and misery, dethrones reason, defiles innocence, - yea, literally takes the bread from the mouths of little children, and topples men and women from the pinnacles of righteousness and gracious living into the bottomless pits of degradation and despair, shame and helplessness and hopelessness. Coffman v. Hammer, 548 S.W.2d 310, 312 (Tenn. 1977).

The record must contain factual evidence showing how or why the particular permit would interfere with public, health, safety, or morals. The expression of fears, speculation, and apprehension of witnesses who appear to have a fixed opinion that sale of beer is harmful and immoral per se is immaterial. Harvey v. Rhea County Beer Board, 563 S.W.2d 790 (Tenn. 1978).

On the issue of safety, the Tennessee Supreme Court has found that in order for traffic congestion to constitute a valid basis for denying a permit to sell beer in the package, it must be shown that the issuance of the beer permit would cause traffic to be more congested and more hazardous than it was prior to the issuance of the beer permit. Hinkle v. Montgomery, 596 S.W.2d 800 (Tenn. 1980). This rule makes it difficult for a beer board to deny a permit based on traffic hazard, especially with existing establishments.

The court has found that there is no difference, in principle, between the purchase of a six-pack of beer to go and the purchase of a six-pack of a non-alcoholic beverage as "in each case the purchaser comes, he buys and he goes." Concerns about increased littering are also not enough to deny a beer permit as the court has found that alcoholic beverages do not cause any more littering problems than non-alcoholic beverages. Coffman, at page 312. Concerns that young people congregate in and about the establishment have also been found insufficient to deny a permit to a convenience store. Ashley v. Bryant, 1989 WL 145886 (Tenn. Dec. 4, 1989).

Insufficient evidence of detriment to public health, safety, and morals was found in Al Koshshi v. Memphis Alcohol Commission, 2005 WL 1692947 (Tenn. Ct. App. 2005). In that case the beer board had based its denial on the business being in the vicinity of neighborhood schools, its location at a busy intersection, and problems with littering, loitering, and prostitution, but the court found that there was not enough evidence to deny the permit on these grounds.

Title deficiencies also are not a legitimate concern of beer boards. If an applicant for a beer permit leases a premises knowing that there is a restrictive covenant precluding the sale of alcoholic beverages, then this is a matter that addresses itself solely to the applicant's judgment and discretion and as to which the beer board has no concern. Lones v. Blount County Beer Board, 538 S.W.2d 386, 390 (Tenn. 1976).

However, where an applicant had a record for violation of laws relating to the sale of beer and the gambling laws and her husband had a serious drinking problem, granting her a permit to sell beer at an establishment 35 miles from the nearest police authority was found to have been detrimental to the public health, safety and morals of those living in the community and was sufficient grounds to refuse the permit. Tippit v. Obion County, 651 S.W.2d 211 (Tenn. 1983).

Although a building itself cannot have a "bad reputation," the reputation and past history of persons proposing to operate the business is of legitimate concern, and the proposed site itself may be unsuitable. Where a site was found to have been plagued with constant complaints of fighting and other disorderly conduct, and was located in an unpatrolled, remote, rural area sixteen miles from the sheriff's office, the beer board could deny a permit based on the public health, safety and welfare of the county. Lynn v. Blue, 1998 WL 730191 (Tenn. App. Oct. 21, 1998).

The sale of beer at a market in which there is a gun shop has been found to interfere with the public health, safety and morals of a community. In Gibbs v. Blount County Beer Board, 664 S.W.2d 68 (Tenn. 1984), the court found that the general public could not distinguish between persons carrying weapons for unlawful purposes, from those persons coming into the store to have a weapon repaired. However, after this case was decided the General Assembly repealed T.C.A. § 39-17-1305 and made it lawful for a person with a handgun carry permit to possess a handgun in a place where alcoholic beverages are sold if the person is not consuming alcoholic beverages. Accordingly, the validity of this case is uncertain under current law.

The court found sufficient evidence of detriment to public health, safety, and morals to justify denial of a beer permit in Suleiman v. City of Memphis, 290 S.W.3d 844 (Tenn. Ct. App. 2008). In this case specific instances directly related to the applicant and the market in question, rather than generalized fears, were presented as evidence.

Permits may be denied for violation of any distance rules which have been validly adopted by resolution of the county legislative body. T.C.A. §§ 57-5-105(b)(1) and 57-5-105(i). However, before a permit may be denied for violation of a 300' rule for proximity to a residential dwelling, the owner of the residential dwelling must appear in person before the beer board and object to the issuance of the permit. T.C.A. § 57-5-105(i).

If a beer permit is denied based on the testimony of a person at a hearing, the beer board is required to notify the person who testified if the applicant applies for a permit again at the same location within 12 months. The person who testified may submit the person's remarks in writing to the beer board at any additional hearing, in lieu of making a personal appearance. T.C.A. § 57-5-105(k).

If a permit application is denied three times, the applicant may not reapply for a permit on the same premises until one year from the date of the third refusal, and only if the circumstances have substantially

changed. T.C.A. § 57-5-105(h). An applicant who makes a false statement on the application must forfeit his or her permit and is ineligible to receive a permit for ten (10) years. T.C.A. § 57-5-105(d).

Expiration/Termination of Beer Permits

Reference Number: CTAS-442

A beer permit has no expiration date, and counties and cities are prohibited from requiring periodic permit renewals. T.C.A. § 57-5-103(a)(9). A beer permit expires upon termination of the business, change in ownership, relocation of the business, or change in the name of the business. A permit holder is required to return the permit to the county or city that issued it within fifteen days of the occurrence of one of these events, but the permit expires regardless of whether the permit is returned. T.C.A. § 57-5-103(a)(6). Unless one of these events occurs, a beer permit is valid until suspended or revoked in accordance with T.C.A. § 57-5-108.

Hours of Operation

Reference Number: CTAS-355

The general law provisions regarding the hours of operation for businesses selling beer are found in T.C.A. § 57-5-301. This statute prohibits the sale of beer during the following hours:

1. No beer or like beverage shall be sold between the hours of twelve o'clock (12:00) midnight and six o'clock a.m. (6:00 a.m.), Monday through Saturday;
2. No beer or like beverage shall be sold between the hours of twelve o'clock (12:00) midnight on Saturday and eleven fifty-nine o'clock p.m. (11:59 p.m.) on Sunday (Sunday night).
3. No such beverage shall be consumed, or opened for consumption, on or about any licensed premises, in either bottle, glass, or other container, after twelve fifteen o'clock a.m. (12:15 a.m.).

However, county legislative bodies are authorized to extend the hours for the sale of beer in their counties by resolution. T.C.A. § 57-5-301(b)(1). (Sample resolution to extend hours). The county legislative body has no authority to shorten the hours for the sale of beer. Attorney General Opinion 86-202 (12/19/86). The power to extend the hours for the sale of beer must be exercised by resolution of the county legislative body, and cannot be delegated to the beer board. See Attorney General Opinion 82-325 (also cited 82-186) (6/24/82).

Regardless of the hours established for the sale of beer, any establishment that has a permit from the ABC to sell liquor or wine for on-premises consumption under Title 57, Chapter 4, is allowed to sell beer at any time the establishment is legally authorized to sell liquor or wine, provided that the establishment has obtained a beer permit. T.C.A. § 57-5-113.

The hours for the sale of beer in “clubs” as defined in T.C.A. § 57-4-102 must conform to the hours for sale of liquor by the drink as provided in T.C.A. § 57-4-203(d) and cannot be changed by resolution of the county legislative body. T.C.A. § 57-5-301(b)(1).

In counties that have adopted liquor by the drink by countywide referendum, county legislative bodies may fix the hours for the sale of beer within the county, but these hours have no effect on business establishments selling liquor by the drink. T.C.A. § 57-5-301(b)(4).

In counties that have not adopted liquor by the drink in a countywide referendum but where a municipality in the county has approved liquor by the drink in a referendum, the hours for sale of beer in the entire county are automatically altered to so that the hours for beer sales are the same as the hours established in T.C.A. § 57-4-203(d) for the sale of liquor by the drink, except in other municipalities within the county that have not approved liquor by the drink. T.C.A. § 57-5-301(b)(5) and Attorney General Opinions 86-202 (12/19/86), U94-50 (3/21/94), and 99-187 (9/22/99). If an incorporated municipality is partially located in more than one county, then the hours established by T.C.A. § 57-4-203(d) will apply to each of the counties. Attorney General Opinion 85-7 (1/7/85). The county legislative body is free to extend (but not decrease) the hours for the sale of beer. T.C.A. § 57-5-301(b)(5) and Attorney General Opinion U94-50 (3/21/94).

The hours for sale of liquor by the drink are established in T.C.A. § 57-4-203(d). These hours also apply to the sale of beer in “clubs” as defined in T.C.A. § 57-4-102, and in counties where a municipality has approved liquor by the drink. The hours established by T.C.A. § 57-4-203(d)(1) prohibit the sale of alcoholic beverages in most establishments as follows:

> Hotels, clubs, zoological institutions, public aquariums, museums, motels, convention centers, restaurants, community theaters, historic interpretive centers, and urban park centers, licensed as provided herein to sell alcoholic beverages, and/or malt beverages, and/or wine may not sell, or give away, alcoholic beverages and/or malt beverages and/or wine between the hours of three o'clock a.m. (3:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays, or between the hours of three o'clock a.m. (3:00 a.m.) and twelve o'clock (12:00) noon on Sundays.

The ABC is authorized to extend the hours of sale in jurisdictions which have approved liquor by the drink by referendum. T.C.A. § 57-4-203(d)(5). Under Rule 0100-1-.03(2), the ABC has extended the hours as follows:

> (2) Consumption on Licensed Premises. Except as provided for in 0100-01-.08 below [dealing with terminal buildings of a commercial air carrier], no licensee shall permit alcoholic or malt beverages to be consumed and/or sold on the licensed premises between the hours of 3 a.m. and 8 a.m. on Monday through Saturday or between the hours of 3 a.m. and 10 a.m. on Sunday unless the local jurisdiction has opted out of the expanded hours. If such is the case, then the consumption and/or sale of alcoholic beverages may begin at 12 noon on Sunday.

Municipalities and metropolitan governments which have adopted liquor by the drink are authorized to opt out of the extended hours set by the ABC rule and go back to the hours established under the statute. T.C.A. § 57-4-203(d)(5). The hours for sale of beer in the county will be the same as the extended hours set by the ABC rule regardless of whether the city has opted out of those hours, unless the county legislative body by 2/3 vote sets the hours for Sunday beer sales in accordance with T.C.A. § 57-5-301(b)(1) to apply in the county. T.C.A. § 57-4-203(d)(5).

In any jurisdiction that has voted to accept Tennessee River Resort District status under T.C.A. § 67-6-103(a)(3)(F) and is considered a Tennessee River Resort District for purposes of Title 57, Chapter 4, Part 1, the hours for the sale of beer within the district cannot be less than the hours for the sale of liquor and wine for on-premises consumption. T.C.A. § 57-5-301(b)(5)(B).

Distance Rules

Reference Number: CTAS-356

County legislative bodies do have certain statutory powers concerning the regulation of the sale of beer in the county which are not shared by the county beer board and cannot be delegated to the board. Only the county legislative body can adopt a resolution to extend the hours for selling beer in the county, and only the county legislative body can adopt distance resolutions, like the 2,000 foot rule and the 300-foot rule. T.C.A. § 57-5-105. Attorney General Opinion 82-325 (6/24/82).

When construing the statutes governing distance rules, it is generally the policy of the courts to construe the statutory provisions liberally in favor of the regulations and the places or institutions they are designed to protect, and strictly against the applicants for the beer permits. Y & M v. Beer Commission or Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984); St. John v. Beer Permit Board, 1998 WL 832392 (Tenn. App. 1998).

Distance rules must be applied uniformly. The Attorney General has opined that a Class A county cannot draw a distinction between on-premises and off-premises consumption for purposes of distance rules, so the same distance rule must be applied regardless of whether the establishment sells beer for consumption on-premises or off-premises. Attorney General Opinions U93-74 (6/17/93) and 01-157 (10/25/01). The Attorney General has also opined that a county cannot enact different distance rules in different areas of the county. Op. Tenn. Att'y Gen. 02-092 (8/28/02) at *7.

If a county changes its distance requirements, it is the distance rule in effect at the time the board votes on the application for a permit that controls that permit application. Attorney General Opinion 10-98 (9/15/10).

Holders of state licenses to sell liquor by the drink are not exempt from local distance rules. If they wish to sell beer, they are subject to the same distance requirements as other beer permit holders. Attorney General Opinion 99-098 (4/30/99).

The 2,000 Foot Rule

Reference Number: CTAS-357

County legislative bodies are given the authority to forbid the sale, storage and manufacture of beer within 2,000 feet of schools, churches and other places of public gathering. T.C.A. § 57-5-105(b)(1). The 2,000 foot rule applies even where the church, school or public gathering place is across state lines. Y & M v. Beer Commission or Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984).

A “church” has been defined by the Attorney General as a building regularly used for public worship. Attorney General Opinion 97-060 (5/1/97). A “place of public gathering” has been defined as a place which the general public has a right to visit and which is in fact visited by many people. Attorney General Opinion U90-121 (8/17/90). A public gathering place is usually confined to schools, churches, and similar public places, and does not include commercial establishments such as stores, filling stations, or dance halls. See Wright v. State, 171 Tenn. 628, 106 S.W.2d 866 (1937). A public cemetery may constitute a public gathering place, depending upon the nature of the cemetery. Attorney General Opinions 91-57 (6/10/91), 92-51 (9/16/92), and 12-02 (1/6/12). A day care center, whether privately owned or owned by a church, meets the definition of "public gathering place." Attorney General Opinions 97-060 (5/1/97) and 98-069 (3/25/98). A baptismal site located on private property is not considered a public gathering place because the public has no right to use the site. Adams v. Monroe County Quarterly Court, 379 S.W.2d 769 (Tenn. 1964). A sports complex containing a day care center is a place of public gathering, but a National Guard armory is not. Tennessee Sports Complex, Inc. v. Lenoir City Beer Board, 106 S.W.3d 33 (Tenn. Ct. App. 2002).

The adoption of the 2,000 foot rule is discretionary. A county legislative body must adopt a resolution implementing the 2,000 foot rule before it can be enforced in the county. Once enacted by the county legislative body, the county beer board can enforce the rule and deny beer permits which violate the rule. T.C.A. § 57-5-105(b)(1). A county beer board issuing a permit contrary to a distance rule adopted by the county legislative body has violated its obligation of upholding and enforcing the laws. Attorney General Opinion 82-325 (6/24/82). (Sample resolution to enact a 2,000 foot rule for the sale of beer).

Once the 2,000 foot rule is adopted, it must be enforced uniformly, and discretionary application of the rule renders it invalid. Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121 (Tenn. 1975). An invalid distance resolution cannot be used as grounds for denial of a beer permit. Seay v. Knox County Quarterly Court, 541 S.W.2d 946 (Tenn. 1976). (See the discussion under Restoring an Invalid Distance Rule below.)

Distance Rules of Less than 2,000 Feet

Reference Number: CTAS-358

While the statute speaks only of a 2,000 foot rule, the Tennessee Supreme Court has held that the authority to impose a 2,000 foot rule implies that a county may impose a rule prohibiting the sale of beer within a lesser radius from churches, schools or places of public gathering. Youngblood v. Rutherford County Beer Board, 707 S.W.2d 507 (Tenn. 1986). Thus, the statute establishes only the maximum distance within which the county can prohibit beer sales, and counties may prohibit the sale of beer within any lesser distance. Attorney General Opinion U93-74 (6/17/93). However, once the county's distance rule is established, it must be uniformly enforced or it will become invalid.

The 300 Foot Rule

Reference Number: CTAS-359

The county legislative body may adopt a resolution to forbid the sale of beer within 300 feet of a residential dwelling, measured from building to building. (Sample resolution to enact 300 foot rule for the sale of beer). In order to use this distance rule to deny an application for a beer permit, the owner of the residential dwelling must appear before the county beer board, in person, and object to the issuance of the permit. The term "residential dwelling" is not defined in the statute; however, it has been interpreted to include a trailer that was occasionally occupied for residential purposes. St. John v. Beer Permit Board, 1998 WL 832392 (Tenn. App. Dec. 2, 1998). This statute applies to zoned as well as unzoned property. This distance rule does not apply to locations where beer permits were issued prior to the date the rule

was adopted by the county legislative body, nor does the rule apply to applications for a change in the licensee or permittee at such locations. T.C.A. § 57-5-105(i).

Measuring to Enforce Distance Rules

Reference Number: CTAS-360

The Tennessee Supreme Court, in Jones v. Sullivan County Beer Board, 292 S.W.2d 185 (Tenn. 1956), held that the exclusive method for measuring distance requirements between beer establishments and schools, churches and other places of public gathering is the straight-line method, unless a different method is prescribed by statute. There is no statute in Tennessee prescribing a method for such measurements. The straight-line method of measuring requires that the distance be measured in a straight line between the properties, at their nearest points, rather than by driving distance or other method. The measurement is made from building to building with respect to distance, because T.C.A. § 57-5-105(b)(1) requires measurement from the "place of gathering," which would be the building. Ewin v. Richardson, 399 S.W.2d 318 (Tenn. 1966). According to the Attorney General, the measurement must be taken from the nearest portion of the entire building, and not just from the nearest portion of a structurally distinct portion of that building that houses the business engaged in the sale of beer. Attorney General Opinion 05-144 (9/27/05). A distance rule will be enforced even when the church, school, or other place of public gathering is located across the state line. Y & M v. Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984) .

Grandfather Provisions

Reference Number: CTAS-361

When a county adopts a distance rule, the rule cannot be used as grounds to revoke a permit where a church, school or other place of public gathering is built after a beer permit is issued, as that would constitute an arbitrary and unreasonable exercise of discretion. Sparks v. Beer Committee of Blount County, 339 S.W.2d 23 (Tenn. 1960). The court stated that while there is no property right in a permit to sell beer, there are some rights which cannot be taken away by unreasonable regulations adopted after the permit was granted. Sparks, at page 24. See also Attorney General Opinion 02-061 (5/8/02).

Under T.C.A. § 57-5-109, a beer permit cannot be suspended, revoked or denied on the basis of proximity to a school, residence, church or other place of public gathering if a valid permit was issued to any business on that same location. The phrase "on that same location" is defined in the statute as being within the boundaries of the real property on which the business was located, and the protection applies regardless of whether the business moves the building on the location or whether the business was a conforming or nonconforming use at the time of the move. T.C.A. § 57-5-109(b). Under this statute, a validly permitted building which meets the distance requirements can be demolished and rebuilt in a different location on the same property which does not meet the distance requirements and the permit cannot be denied. Exxonmobil Oil Corp. v. Metropolitan Government of Nashville, 2005 WL 1528252 (Tenn. Ct. App. 12/12/05).

This grandfather provision does not apply if there has been a six-month gap in beer sales at the location. However, if the discontinuance of beer sales for more than six months is caused by a beer board's refusal to issue a permit, the applicant does not lose the protection of the statute if the applicant appeals the denial; a new six- (6) month period begins to run on the date when the appeal of the denial is final. T.C.A. § 57-5-109(c).

The current provisions of this statute are a result of litigation between Exxon and the Metropolitan Government of Nashville and Davidson County. See Exxon Corp. v. Metropolitan Government of Nashville of Nashville and Davidson County, 72 S.W.3d 638 (Tenn. 2002) and Exxonmobil Oil Corp. v. Metropolitan Government of Nashville and Davidson County, 2005 WL 1528252 (Tenn. Ct. App. 12/12/05). In the Exxon cases, the original building was not in violation of the distance requirement. Exxon purchased the business, demolished the building and relocated it in a position that did violate the distance requirement. The statute was amended to allow Exxon to fall within its provisions regardless of whether the business was conforming at the time the building was moved. This has caused the statute to be broader than a typical "grandfather" provision.

Restoring an Invalid Distance Rule

Reference Number: CTAS-362

When a county issues beer permits in violation of an established distance rule, the rule becomes invalid and it can no longer be used as a basis for denying other permits. Cox Oil Co., Inc. v. City of Lexington Beer Board, 2002 WL 31322533 (Tenn. Ct. App. 2002); Randolph v. Coffee County Beer Board, 2002 WL 360335 (Tenn. Ct. Ap. 2002); Reagor v. Dyer County, 651 S.W.2d 700 (Tenn. 1983); Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983); Henry v. Blount County Beer Board, 617 S.W.2d 888 (Tenn. 1981); City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn 1978); Seay v. Knox County Quarterly Court, 541 S.W.2d 946 (Tenn. 1976). Restoring an invalid distance rule is a difficult process which usually results in costly litigation, and the law on this subject is complex and confusing. To avoid problems, distance rules should be carefully enforced.

To restore an invalid distance rule, the county legislative body generally has two options. The first option is to rescind the existing distance rule and establish a less restrictive rule within which all issued beer permits would fall. A new distance rule could be established by measuring the shortest distance between an existing licensee and the nearest school, residence, church or other place of public gathering. This new rule could then be uniformly applied. Youngblood v. Rutherford County Beer Board, 707 S.W.2d 507 (Tenn. 1986); Attorney General Opinion U88-17 (2/18/88).

The second option is to pass a new resolution reinstating the distance rule, but in order to do this all permits that were issued in violation of the distance rule must be eliminated by revocation or some other method. Henry v. Blount County Beer Board, 617 S.W.2d 888 (Tenn. 1981); Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983); Randolph v. Coffee County Beer Board, 2002 WL 360335 (Tenn. Ct. Ap. 2002). As a practical matter, this means that all invalidly issued permits must be revoked. However, permits that were issued in conformance with the distance rules in existence at the time they were issued are validly issued permits protected under T.C.A. § 57-5-109, and these permits cannot be revoked.

In theory the distance rule also may be restored by elimination of the discriminatorily issued permits through attrition. Attorney General Opinion 87-34 (3/6/87); see also Attorney General Opinion U91-51 (4/9/91). However, in practice this could be a lengthy process and the distance rule could be challenged and declared invalid if the county allows discriminatorily issued permits to remain in use while using the distance rule to deny other applications for permits. An earlier opinion of the Attorney General states that elimination through attrition is in the nature of a post facto amendment which does not cure an invalid distance ordinance. Attorney General Opinion 82-325 (6/24/82). See also City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn. 1978).

To complicate matters, courts occasionally find that permits issued invalidly cannot be revoked, usually in the context of detrimental reliance. In Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983), there had been a full hearing prior to the issuance of the permit, the applicant made it clear that he would not build if the permit was not issued, the permit was issued and the permit holder operated his business there for over 10 years. Under these circumstances the court found that the permit could not be revoked. In other cases courts have required issuance of permits even though they violate the existing distance rule. In Coffman v. Beer Board of City of Jellico, 1992 WL 122676 (Tenn. Ct. App. 1992), the court found that building a convenience mart in reliance on a city ordinance stating that the distance was to be measured along right-of-way was sufficient “detrimental reliance” to prohibit the beer board from refusing to issue a permit based on the Supreme Court’s opinion that distance must be measured by the straight line method.

Prohibition of Beer in Public Parks

Reference Number: CTAS-363

The county legislative body may also, by resolution, prohibit or restrict the consumption of any alcoholic beverage or beer in public parks or recreation areas which are not within the corporate boundaries of a municipality. Such areas must be prominently posted by the county in order to give the public reasonable notice. A violation of the resolution is a misdemeanor. T.C.A. § 5-5-127. While the statute only refers to consumption, restrictions on the sale of beer within park boundaries are so closely tied to consumption that they come within the intent of the statute. However, the statute does not seem to be intended to prohibit the mere possession of beer or alcoholic beverages in Class A counties. Attorney General Opinion

U87-19 (2/10/91). (Sample resolution to restrict/prohibit the consumption of beer in public parks or recreation areas).

Prohibited Acts

Reference Number: CTAS-364

In addition to possible suspension or revocation of the beer permit or the imposition of civil penalties, persons violating the laws, rules and regulations (including validly enacted resolutions of the county legislative body) governing beer and like beverages may be prosecuted criminally. The criminal provisions are set out in Tennessee Code Annotated, Title 57, Chapter 5, Part 3, and the penalties are set out in T.C.A. § 40-35-111.

Minors and the Beer Laws

Reference Number: CTAS-365

Several statutes dealing with the sale or possession of beer have special provisions dealing with the purchase or possession of beer by minors. When used in Title 57 of the *Tennessee Code Annotated* with respect to purchasing, consuming or possessing alcoholic beverages (including beer), “minor” means any person who has not attained 21 years of age. T.C.A. § 1-3-105(1). However, any person who is 18 years of age or older may transport, possess, sell or dispense alcoholic beverages (including beer) in the course of that person’s employment. T.C.A. § 1-3-113.

In summary, the statutes dealing with minors provide as follows:

1. It is unlawful for any person under the age of 21 to purchase, possess, transport or consume alcoholic beverages (including beer), except that persons who are 18 or over may transport, possess, sell or dispense alcoholic beverages (including beer) in the course of their employment. T.C.A. §§ 1-3-113 and 57-5-301(e). A person under the age of 18 cannot process a sale or bag beer in the course of his or her employment. Attorney General Opinion U90-116 (8/15/90).
2. Anyone purchasing beer for off-premises consumption must present a valid, government-issued form of identification that contains a photo and the birth date of the consumer. Persons exempt under state law from the requirement of having a photo ID must present other identification acceptable to the permit holder. Beer cannot be sold to anyone who does not present the required identification showing that the person is an adult. However, a permit holder cannot be criminally prosecuted or civilly punished for any sale made to a person who is or reasonably appears to be over the age of 50 and failed to present the required identification. T.C.A. § 57-5-301(a)(1).
3. It is unlawful for any person engaged in the sale, manufacture or distribution of beer to make or permit to be made any sale to minors. T.C.A. § 57-5-301(a)(1). The first offense of selling beer to a minor is a Class A misdemeanor. T.C.A. § 57-5-301(a)(2). A second offense of selling beer to a minor is a Class E felony. Upon the second conviction, the permit of such person shall be automatically and permanently revoked regardless of any other penalty actually imposed. T.C.A. § 57-5-303(c). However, the permit cannot be revoked (but may be suspended for up to 10 days or a penalty up to $1,500 may be imposed) if an operator or any person working for the operator sold beer to a minor over the age of 18 after the minor exhibited identification (false or otherwise) indicating the minor’s age to be 21 or over, the minor reasonably appeared to be of that age, and the person making the sale did not know that the person was a minor. T.C.A. § 57-5-108(b). Note that the penalties for sale of beer to minors are different if an off-premises permit holder has been certified as a "Responsible Vendor" under T.C.A. § 57-5-606.
4. It is unlawful for any person under the age of 21 to purchase or attempt to purchase beer. T.C.A. § 57-5-301(d)(1). While a store owner or employee cannot hold a driver's license or other identification as evidence of a violation, a violator may be detained until proper authorities are called and arrive, provided that the offense was committed in the owner’s or employee’s presence and delivery of the offender to proper authorities occurs without unnecessary delay. Attorney General Opinion U88-59 (5/26/88).
5. It is unlawful for anyone to purchase beer or like beverages for anyone under the age of 21. T.C.A. § 57-5-301(d)(2).
6. It is unlawful for any person under the age of twenty-one (21) to exhibit false identification or to make false statements to the effect that he or she is 21 years of age for the purpose of purchasing beer. T.C.A. § 57-5-301(d)(3).

7. It is unlawful for the management of any place where beer is sold to allow minors to loiter in such places. The burden of ascertaining the age of minor customers is on the owner or operator of the business. T.C.A. § 57-5-301(c).

The law does not establish a minimum age for applicants for beer permits. Attorney General Opinion 87-28 (2/23/87). However, T.C.A. § 1-3-114 provides that any person 18 years old or older must not be prohibited from entering into any profession or from performing any services on the basis of the person's minority. Therefore, an 18-year-old person could obtain a permit to sell beer, if the person is otherwise qualified. A county or city could not set a minimum age requirement for obtaining a permit to sell beer at greater than 18 years of age.

The Attorney General has opined that an individual under the age of 18 is not eligible to obtain a permit for the retail sale of alcoholic beverages, pursuant to T.C.A. § 57-3-210(h), if the person intends to engage in the physical manufacture, storage, sale, or distribution. However, T.C.A. § 57-3-210(h) does not apply to corporations and thus does not prohibit the carrying on of a retail liquor business by a corporation which has a minority or majority stockholder under the age of 18, so long as the stockholder is not engaged in any of the prohibited acts under that subsection. While that code section does not apply to the sale of beer, it could be inferred from the opinion that a Class B county or city could reasonably set a minimum age at 18 in order to obtain a beer permit, but if the applicant was a corporation with a stockholder under the age of 18, a permit could still be issued. Attorney General Opinion 87-28 (2/23/87) and Attorney General Opinion U86-101 (7/2/86).

Sting Operations Using Minors

Reference Number: CTAS-375

Law enforcement may conduct sting operations using minors in accordance with the requirements of T.C.A. § 39-15-413. Criminal prosecutions for unlawful sales of beer for off-premises consumption to underage persons as a result of a sting operation using a person under the age of 21 cannot be commenced unless the person or law enforcement officer supervising the person used in the sting operation obtains the name of the permit holder and the employee of the permit holder from whom the beer was purchased or attempted to be purchased. The law enforcement officer is required to notify the permit holder in writing within 10 days of the sting that the action occurred, giving the name of the permit holder and the employee involved, and whether the person was successful in making the purchase. T.C.A. § 39-15-413.

Employing Persons Convicted of Certain Crimes

Reference Number: CTAS-366

It is unlawful for the holder of a beer permit or any employee of a person engaged in the business of selling beer to be a person who has been convicted of any violation of the laws against possession, sale, manufacture or transportation of intoxicating liquor or any crime involving moral turpitude, within the last 10 years. T.C.A. § 57-5-301(a). The 10-year period begins on the date of conviction and ends 10 years from that date. Attorney General Opinion U90-116 (8/15/90).

Sale of Untaxed Beer - Contraband

Reference Number: CTAS-367

No beer retailer may purchase beer from anyone other than duly licensed wholesalers (and certain Tennessee manufacturers, as set out in T.C.A. § 57-5-101) located in Tennessee. T.C.A. § 57-5-201. Any beer sold or offered for sale by or in the possession of a retailer, purchased from any person or firm other than a duly licensed Tennessee wholesaler or distributor, is declared to be contraband and is subject to confiscation. T.C.A. § 57-5-409. The beer board may revoke or suspend the permit of any retailer who is found to possess beer on which the state barrel-age tax and the city and county wholesale beer tax have not been paid. T.C.A. § 57-5-108(m).

Storage at Other Than Permit Address
Reference Number: CTAS-368

It is unlawful for any retailer to store beer purchased for a specific retail location at any place other than that specific retail location. T.C.A. § 57-5-416. No retailer may store any alcoholic beverages, wine, or beer at any location other than the licensed premises and the retailer shall not hold, store, or accept delivery of any products intended for another retailer. T.C.A. § 57-3-406(g).

Outdoor Signs
Reference Number: CTAS-369

No outdoor sign, advertisement or display that advertises beer may be erected or maintained on the property on which a retail beer establishment is located other than one sign, advertisement or display which makes reference to the fact that the establishment sells beer but does not use brand names, pictures, numbers, prices or diagrams relating to beer. The prohibition does not apply to any sign, advertisement or display erected or maintained by or at the request of a temporary beer permittee or to any sports arena, stadium or entertainment complex. T.C.A. § 57-5-304. This statute does not specifically prohibit the use of slogans, trademarks or symbols, so their use is not prohibited except where they may consist of a picture, diagram, or both. Attorney General Opinion U89-140 (12/7/89). According to the Tennessee Attorney General, this statute is susceptible to challenge under the First Amendment and it is unlikely to survive such a challenge. Op. Tenn. Att'y Gen. 15-04 (1/14/15).

Wholesaler/Retailer Relationship
Reference Number: CTAS-370

Retailers are prohibited from purchasing beer from anyone other than a wholesaler licensed and located in Tennessee, and wholesale distributors are prohibited from purchasing beer from anyone other than a manufacturer, importer, or other Tennessee wholesaler licensed in Tennessee. T.C.A. § 57-5-201(c). Brewers and wholesalers are prohibited from making any loan, furnishing any fixtures of any kind, or having any interest, direct or indirect, in the business of any retailer, or in the premises of any retailer. T.C.A. § 57-5-101(a). A limited exception to these rules exists for breweries which are located in counties having a population of 75,000 or more or in a premier resort city that has adopted liquor by the drink. T.C.A. § 57-5-101(c). See "Microbreweries and Brew Pubs" herein.

Tennessee Responsible Vendor Act
Reference Number: CTAS-371

The Tennessee Responsible Vendor Act of 2006, codified at T.C.A. § 57-5-601 et seq., is a program administered by the Tennessee Alcoholic Beverage Commission (ABC) for vendors who sell beer for off-premises consumption. The program is an effort to curb the sale of beer to minors and to reduce intoxication and accidents, injuries and deaths related to intoxication. The program is voluntary; vendors are not required to participate. Vendors who do elect to participate in the program and who receive and maintain their certification as a responsible vendor are entitled to reduced penalties for offenses related to the sale of beer to minors.

ABC Fees. The ABC charges the following fees, set out in T.C.A. § 57-5-609, in connection with the administration of the responsible vendor program:

Annual fee for entities approved to conduct responsible vendor training--$ 35

Annual fee for responsible vendors:

0 - 15 certified clerks--$ 25

16 - 49 certified clerks--$ 75

50 - 100 certified clerks--$150

Over 100 certified clerks--$250

Responsible Vendor Certification

Reference Number: CTAS-372

Under T.C.A. § 57-5-606, the ABC will certify a beer vendor as a "responsible vendor" upon compliance with the following:

1. All clerks who sell beer for off-premises consumption must successfully complete a responsible vendor training program and become certified within 61 days after being employed by the vendor, and the vendor must verify with the ABC prior to employing a clerk that the clerk is eligible for certification.
2. Each clerk must be issued a name badge with the clerk's first name clearly visible, and must wear the badge at all times while on duty.
3. The vendor must provide employees with instruction approved by the ABC which includes the laws regarding the sale of beer for off-premises consumption, methods for recognizing and dealing with underage customers, and procedures for refusing to sell beer to underage customers and for dealing with intoxicated customers.
4. The vendor must require all certified clerks to attend at least one annual meeting at which the vendor disseminates updated information prescribed by the ABC.
5. The vendor must maintain employment and training records.

Responsible Vendor Signage

Reference Number: CTAS-373

Responsible vendors are required to post signs on their premises informing customers of their policy against selling beer to underage persons. These signs must be at least 8½" x 11" and must contain the following language: "STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER." T.C.A. § 57-5-301(a)(1).

Responsible Vendor Provisions Affecting Beer Boards

Reference Number: CTAS-374

The following provisions of the Tennessee Responsible Vendor Act relate to the operation of the beer board:

1. If a beer board finds that any off-premises beer permit holder made a sale to a minor, the beer board must report the name of the clerk who made the sale to the ABC within 15 days of finding that the sale occurred. The clerk's certification is invalidated and the clerk cannot reapply for one year from the date of the beer board's determination. The ABC will notify the responsible vendor of their certified clerks who have lost their certification within 15 days after notification by the beer board (and the responsible vendor cannot allow these clerks to sell beer). T.C.A. § 57-5-607.
2. The beer board cannot suspend or revoke a responsible vendor's beer permit based on the sale of beer to a minor if the clerk who sold the beer was certified and attended annual meetings since the certification, or was within the 61-day period after employment. However, the ABC will revoke the responsible vendor's certification if the vendor knew or should have known about the violation, or participated in or committed the violation, and the beer board may then impose penalties as if the vendor had not been certified as a responsible vendor. Also, the ABC will revoke the vendor's responsible vendor certification for a period of three years if there are two violations within a 12-month period. T.C.A. § 57-5-608.
3. Penalties that may be imposed on responsible vendors for violations involving the sale of beer to minors are lower than those for vendors who do not participate in the program. A responsible vendor's permit cannot be revoked or suspended for a clerk's illegal sale of beer to a minor as long as the responsible vendor and the clerk were in compliance with the act; a civil penalty not exceeding $1,000 may be imposed instead. T.C.A. § 57-5-108(a)(2)(A).
4. Vendors who are not in compliance with the responsible vendor program are subject to suspension or revocation of their beer permit for the sale of beer to minors. These non-complying vendors may be offered the alternative of paying a civil penalty not exceeding $2,500 for each sale to a minor, or a penalty not exceeding $1,000 for any other offense. T.C.A. § 57-5-108(a)(2)(B).
5. The beer board is required to file an annual report with the ABC by February 1 each year containing the following statistical information for the preceding calendar year: (a) total number of permits issued for off-premises consumption, (b) number of violations for sale of beer for off-premises consumption to a

minor resulting from a sting, and arrests made not related to a sting, (c) whether the violations reported occurred at an establishment participating in the responsible vendor program, (d) for stings conducted at establishments participating in the responsible vendor program, whether the underage person was unsuccessful in making the purchase, (e) type and number of violations, other than sales of beer to minors for off-premises consumption, that occurred at establishments selling beer for off-premises consumption, (f) name of permit holder at location where violations occurred, and (g) specific penalty imposed for each violation. T.C.A. § 57-5-605.

Revocation, Suspension, and Imposition of Civil Penalties

Reference Number: CTAS-376

The beer board or county legislative body which issued a beer permit (hereinafter referred to as the "board") is authorized to suspend or revoke the permit as provided in T.C.A. § 57-5-108. Suspension, revocation, or imposition of a civil penalty may be made for violation of any provision of the beer laws set out in Title 57, Chapter 5, of the Tennessee Code Annotated, or whenever it satisfactorily appears that the licensed premises are being maintained and operated in a manner which is detrimental to the public health, safety or morals. T.C.A. § 57-5-108(c). Special rules apply to suspensions, revocations, and imposition of civil penalties for sales of beer to minors for vendors who have been certified as responsible vendors under the ABC's responsible vendor certification program.

The board may, at the time it imposes suspension or revocation, offer the permit holder the alternative of paying a civil penalty not exceeding $2,500 for each offense involving sales to minors, or $1,000 for any other offense. However, if the permit holder is a certified responsible vendor and both the permit holder and the clerk are in compliance with T.C.A. § 57-5-606, the board may not revoke or suspend a permit for an illegal sale of beer to a minor, but may instead impose a civil penalty of $1,000 for each offense of selling beer to a minor. T.C.A. § 57-5-108(a)(2).

If a civil penalty is offered as an alternative to suspension or revocation, the permit holder must be given seven days within which to pay the penalty before the suspension or revocation can be imposed. If the civil penalty is paid within that time, the suspension or revocation is deemed withdrawn. T.C.A. § 57-5-108(a)(2)(G) The beer board is authorized to accept at any time the payment of a civil penalty, not exceeding the stated amounts, from a permit holder charged with a violation, and the payment will be deemed an admission of the violation and no other penalty can be imposed. T.C.A. § 57-5-108(a)(3).

A permit cannot be revoked on the grounds that beer was sold to a minor over the age of 18 years if the minor presented identification, false or otherwise, indicating the minor's age to be 21 or over, and the minor reasonably appeared to have been of the age indicated in the identification and was unknown to the person making the sale. In this event, the permit can be suspended for a period not exceeding 10 days or a civil penalty of up to $1,500 may be imposed. T.C.A. § 57-5-108(b).

The county legislative body or the county beer board may, in its discretion, revoke or suspend the permit of any beer retailer within its jurisdiction who is found in possession of untaxed beer. The burden of proof is on the retailer to prove that the beer has been taxed. T.C.A. § 57-5-108(m). The beer board also may suspend or revoke a permit for failure to pay the annual privilege tax after the required notices have been sent. T.C.A. § 57-5-104(b)(3).

When a permit is revoked by the county beer board, a new permit for the sale of beer on the same premises shall not be issued for one year following the final effective date of the revocation. However, the board may, in its discretion, issue a new permit on the same premises before the expiration of the one year period if the individual applying for the permit is not the original holder of the permit or any family member who could inherit from such individual by intestate succession. T.C.A. § 57-5-108(k).

Permanent revocation of beer permits can only be imposed when the permit holder has at least two violations within a 12-month period. Revocation of beer permits applies only to the permit holder and only at that location; penalties cannot be applied to other beer permits held by the permittee at other locations. Revocations do not stay with the property when the property changes hands. Revocation at one location should not be the sole disqualifying factor when considering issuance of beer permits at different locations. T.C.A. § 57-5-108(a)(2).

Any decision concerning revocation, suspension or civil penalties must be based on the facts of the particular situation. There are very few situations which are exactly alike. The county beer board is authorized to revoke a beer permit for any of the reasons which would disqualify an applicant in the first in-

stance. Each fact situation must be considered individually. The cases cited throughout the material show that a county must have a valid reason for the denial, revocation or suspension of a beer permit.

Investigations
Reference Number: CTAS-377

When a beer board receives information concerning possible violations of the law by a beer permit holder, the board should refer the matter to appropriate law enforcement authorities. When necessary, however, the beer board may take investigatory action itself. The Tennessee Court of Appeals has held that a county beer board possesses continuing, supervisory powers to police permit holders after the issuance of the permit. In an unpublished opinion, the court of appeals found that a beer board was empowered to employ an undercover investigator after the county sheriff had refused to conduct an investigation concerning illegal sales of beer to minors. Jackson v. Franklin County Beer Board, 1993 WL 46524 (Tenn. Ct. App. 1993). Relying on this opinion, the Attorney General has opined that a beer board may hire a private investigatory firm to conduct undercover investigations concerning the sale of beer to minors, and that minors may be used in these investigations. Attorney General Opinion 01-062 (4/20/01).

Hearings and Due Process
Reference Number: CTAS-378

While no one has a right to a beer permit in the first instance, once a permit has been issued it becomes a valuable property right which is protected under the state and federal constitutions and a permit holder must be afforded due process with respect to deprivation of the privilege granted by the permit. Due process is a flexible standard, calling for the procedural protections that the particular situation demands. In general, the factors to be considered are: (1) the nature and importance of the private interest at stake, (2) the risk of erroneous deprivation of the interest and the probable value of additional safeguards, and (3) the governmental interest, including any additional burdens that procedural safeguards might entail. A beer permit is a very important interest because a person's livelihood may depend upon it. A permit holder is entitled to notice and an opportunity to be heard that is reasonable under the circumstances. Attorney General Opinion 94-064 (4/28/94).

The due process requirements may extend to persons other than the permit holder. The Attorney General has opined that the statute which prohibits the issuance of a beer permit for one year on premises where a permit has been revoked could be unconstitutional in application if the property owner is different from the permit holder and the property owner is not given an opportunity to show that he or she was innocent of wrongdoing and had taken all action which reasonably could be expected to prevent the violation. Attorney General Opinion 90-77 (8/13/90).

Reciprocal Notices of Suspensions and Revocations with ABC
Reference Number: CTAS-2120

When the Alcoholic Beverage Commission (ABC) suspends or revokes an on-premises liquor license, the ABC is required to send notice by certified mail to the local beer board in the county in which the holder of the ABC license is located. Upon receipt of the notice, the beer board may temporarily suspend the establishment's beer permit and shall schedule a hearing for the next regularly scheduled meeting of the beer board that is at least 14 days after receipt of the notice, and notify the permit holder of the date and time to appear and show cause why the on-premises beer permit should not be suspended or revoked. If the permit is suspended or revoked, no permit to sell beer on premises shall be issued to any person for that location for the period of time stated in the decision of the ABC. The beer board's decision is final and may be appealed. T.C.A. § 57-1-214.

When a beer board suspends or revokes an on-premises beer permit, the beer board is required to send notice by certified mail to the executive director of the Alcoholic Beverage Commission (ABC), including the record of evidence and the determination made by the board in suspending or revoking the permit. T.C.A. § 57-1-214.

These reciprocal notification provisions apply in all counties other than Hancock, Union, Grainger, Claiborne, Cocke, Jefferson, Hawkins, Hamilton, and Knox, which counties are participating in a similar reciprocal notification program enacted as a pilot project enacted under T.C.A. § 57-5-108(o)(1).

Judicial Review of Beer Board Action

Reference Number: CTAS-379

Any applicant who complies with the conditions and provisions of T.C.A. § 57-5-105 must be issued the necessary permit and in the event the permit is denied, the applicant is entitled to have the denial reviewed before the chancery or circuit court. T.C.A. § 57-5-105(e). The procedure for judicial review of beer board actions, including the denial, suspension or revocation of a beer permit, or imposition of a civil penalty, is set out in T.C.A. § 57-5-108. The action of the beer board is reviewed when a dissatisfied party files a statutory writ of certiorari in the circuit or chancery court in the county where the beer board is located. Immediately upon the grant of the writ of certiorari, the beer board is required to cause to be made, certified and forwarded to the court a complete transcript of the proceedings of the beer board. The proceedings will be a trial de novo, meaning that the court will hear all evidence and will not rely on the record of the proceedings before the beer board. The judge to which the petition for certiorari is addressed has the authority to supersede, stay or enjoin the beer board's order of revocation, suspension, or imposition of a civil penalty, upon a showing of good cause on the part of the petitioning party. Any party dissatisfied with the decree of the trial court may appeal the decision, and the case will be heard upon the transcript of the records from the trial court. If a final judgment is entered by the trial court superseding the revocation or suspension order, and the cause is appealed by the beer board, the final judgment of the trial court will remain in force until final appellate disposition of the case. T.C.A. § 57-5-108.

A beer permit applicant may seek review from the circuit or chancery court before the final decision of the beer board in certain limited situations. For instance, if a beer board needlessly prolongs an application for a beer permit, the beer board has, in effect, denied the application so that the applicant may seek court review. City of Murfreesboro v. Fortner, 570 S.W.2d 859 (Tenn. 1978). While action by the beer board tabling an application for a permit until the beer board's next quarterly meeting is not generally an "order" as used in the statute allowing review by the circuit or chancery court by writ of certiorari of any order of any agency, if a beer board tables an application for reasons completely extraneous to the qualifications of an applicant (e.g., building set-back) such that further pursuit of a permit through administrative channels would be futile, then the courts should grant the writ. McCarter v. Goddard, 609 S.W.2d 505 (Tenn. 1980).

State Barrels Tax

Reference Number: CTAS-380

Every person, firm, corporation, joint-stock company, syndicate or association in this state storing, selling, distributing or manufacturing beer and like beverages must pay a special privilege tax levied at the rate of $4.29 per barrel (31 liquid gallons) of beer stored, sold, distributed by gift or sale, or manufactured in Tennessee. T.C.A. § 57-5-201. The Commissioner of Revenue is the administrator and collector of the tax. T.C.A. § 57-5-202. This tax is a state privilege tax, and counties cannot levy any like tax. T.C.A. § 57-5-201(b).

Exemptions to this tax are as follows:

1. Beer manufactured in Tennessee but exported for sale, distribution or gift. T.C.A. § 57-5-201(a)(1).
2. Beer dispensed gratuitously and consumed on the premises. T.C.A. § 57-5-201(a)(1).
3. Beer sold for consumption on a U. S. military or naval installation or to post exchanges, ship service stores, commissaries and messes operated by the U. S. armed forces. T.C.A. § 57-5-208.

Wholesalers and manufacturers of beer must apply to the Commissioner of Revenue and receive a certificate of registration. This registration costs $20.00 for wholesalers and $40.00 for manufacturers. T.C.A. § 57-5-102. In addition, wholesalers and manufacturers of beer must execute a bond securing the payment of the state privilege tax, payable to the Commissioner of Revenue. T.C.A. § 57-5-110.

Proceeds of the tax are distributed as follows:

1. Up to 4% to the Department of Revenue to defray the expenses of administration of this tax. T.C.A. § 57-5-202.

2. Of the amount paid into the state treasury:
    - 10.05% to the several counties equally for general purposes.
    - 10.05% to the incorporated municipalities according to population for general purposes.
    - .41% to the Department of Mental Health and Mental Retardation to assist municipalities and counties in carrying out the provisions of the "Comprehensive Alcohol and Drug Treatment Acts of 1973."
    - Remainder (79.49%) to the state general fund. T.C.A. § 57-5-205.

The tax is due and payable on or before the 20th day of the month following the month in which it accrues. T.C.A. § 57-5-203. The Commissioner of Revenue is authorized to suspend or revoke the certificate of registration, or impose civil penalties, for failure to make the required reports or to pay the tax when due. T.C.A. §§ 57-5-108(l), 57-5-204. Persons delinquent in making reports or paying taxes are subject to a penalty of 5 percent of the unpaid tax for each thirty (30) days that the tax is unpaid up to a maximum of twenty-five percent (25%) of the unpaid amount, with minimum penalty of $15. Additional penalties can be imposed by the Commissioner of Revenue for negligence (10 percent of underpayment) or fraud (100 percent of underpayment). Interest is charged at the legal (formula) rate. T.C.A. §§ 67-1-801, 67-1-804.

Wholesale Beer Tax

Reference Number: CTAS-381

A tax is imposed on the sale of beer and like beverages at wholesale. T.C.A. §§ 57-6-102, 57-6-103. Beer or ale sold to any port exchange, ship service store, commissary, open mess, officers' club, N.C.O. club or other organization recognized by and located on any fort, base, camp or post of the U. S. armed forces is exempted from this tax. T.C.A. § 57-6-111.

The rate of the tax is thirty-five dollars and sixty cents ($35.60) per barrel of thirty-one gallons (31 gals.) of beer sold. Barrels containing more or less than thirty-one galls (31 gals.) shall be taxed at a proportionate rate. T.C.A. § 57-6-103(a).

The Commissioner of Revenue administers the tax. The wholesale beer distributor collects the tax and remits the proceeds as follows:

1. Seventeen cents (17¢) of the gross tax owed per barrel to the Department of Revenue, to be kept in a special fund and used only for expenses in administration of this tax. T.C.A. § 57-6-103(f)
2. Ninety-two cents (92¢)of the gross tax owed per barrel retained by the wholesaler or manufacturer operating as a retailer to defray the cost of collecting and remitting the tax. T.C.A. § 57-6-103(g)
3. The remainder of the tax to the city or county in which the sale is made. T.C.A. § 57-6-103.
   The tax collected on sales to licensed retailers is to be paid to the county or city in which the retailer's place of business is located, and the tax on all other sales made at the wholesaler's place of business is to be paid to the county or city in which the wholesaler's business is located. T.C.A. § 57-6-103(d). All sales made at the wholesaler's place of business as well as any sale or transfer contemplated by §57-5-101(c)(2) by a manufacturer operating as a retailer to a location owned or operated by such manufacturer-retailer are deemed to be wholesale sales and the tax must be collected. T.C.A. § 57-6-103(c).

   An annexing or newly-incorporated municipality is required to provide written notice of the date of annexation or incorporation, together with a list of retailers located in the territory, to each wholesale beer distributor within the territory. T.C.A. § 57-6-103(i)(1). After annexation, the wholesale beer taxes generated within the annexed territory are apportioned between the city and the county in accordance with the provisions of T.C.A. § 6-51-115. For newly incorporated areas, the taxes generated within the newly-incorporated area are apportioned between the city and the county in accordance with the provisions of T.C.A. §§ 6-1-220, 6-18-115, or 6-30-108, as applicable, as well as T.C.A. §§ 6-58-112(c) and 6-51-115(b).

   The tax is due and payable monthly on or before the 20th day of each month for the tax collected on sales of the previous month. T.C.A. § 57-6-103(a). If a wholesaler fails or refuses to remit the tax when due, the concerned county or city or the Department of Revenue is authorized to institute legal action for collection by any method authorized by law for collection of delinquent privilege taxes (see Title 67, *Tennessee Code Annotated*), or by filing suit against the wholesaler. In addition, the city or county may revoke or suspend the permit or impose civil penalties, or the Commissioner may revoke or suspend the wholesaler's certificate of registration or impose civil penalties. T.C.A. §§ 57-6-107 and 57-5-108.

Persons delinquent in making reports or paying taxes are subject to a penalty of five percent of the unpaid tax for each 30 days that the tax is unpaid up to a maximum of 25 percent of the unpaid amount, with minimum penalty of $15. Additional penalties can be imposed by the Commissioner of Revenue for negligence (10 percent of underpayment) or fraud (100 percent of underpayment). Interest is charged at the legal (formula) rate. T.C.A. §§ 67-1-801, 67-1-804.

Wholesalers must furnish an indemnity or personal bond, subject to annual renewal, satisfactory to the Department of Revenue in an amount equal to the amount of tax payable based on the highest month's sales of the previous year or estimate thereof, not to exceed $10,000, or in lieu of the bond the Commissioner of Revenue may allow a certificate of deposit. T.C.A. § 57-6-107.

Persons convicted of violating any provision of the wholesale beer tax laws are guilty of a Class C misdemeanor, which may subject the convicted person to imprisonment of up to thirty (30) days and a fine of up to $50, or both. T.C.A. §§ 57-6-114, 40-35-111. In addition, the beer board is required to suspend a wholesaler's license for 30 days for violation of any provision of T.C.A. § 57-6-104 (regulations governing wholesale pricing, container sizes, and sales territories). T.C.A. § 57-6-114(b).

Annual Privilege Tax

Reference Number: CTAS-382

An annual privilege tax in the amount of one hundred dollars ($100.00) is imposed on the selling, distributing, storing or manufacturing of beer in Tennessee. Any person, firm, corporation, joint-stock company, syndicate or association engaged in selling, distributing, storing or manufacturing beer is required to remit the tax annually on January 1 to the county or city in which the business is located. The county clerk collects this tax for counties, and the funds may be used for any public purpose. T.C.A. § 57-5-104(b).

The county is required to mail written notice of the tax to each permit holder at least thirty (30) days prior to January 1 each year. If the permit holder does not remit the tax by January 31 (or within thirty (30) days after notice is mailed, whichever is later), the county is required to notify the permit holder by certified mail that the tax payment is past due. If the permit holder does not pay the tax within ten (10) days after receiving the certified notice, the permit may be revoked by the beer board. T.C.A. § 57-5-104(b).

When a new permit is issued, the permit holder is required to pay the tax on a prorated basis for each month or portion of a month remaining until the next tax payment date. T.C.A. § 57-5-104(b)(5).
