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## Revocation, Suspension, and Imposition of Civil Penalties

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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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## 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 If the civil penalty is paid within that time, the suspension or revocation is deemed withdrawn.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 instance. 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).

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