

2024 Legislative Update: Tobacco & Excise Tax Laws

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Chris Serak, Deputy Director & Executive Secretary (ATC)

Ashley Merritt, General Counsel & Communications Director (ATC)

Collin Davis, Director of Tax Policy (DOR)



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Legal Disclaimers



"I wouldn't—there's an awful lot of scary-sounding legalese."

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Impacted Code Sections by Enrolled Act

Enrolled Act	Description	Impacted Indiana Code Sections
SEA 149	Tobacco	7.1-3-18.5-3.2; 7.1-3-18.5-2; 7.1-3-18.5-2; 7.1-3-18.5-9.2; 7.1-5-10-26; 35-46-1-11.4
SEA 228 & HEA 1120	Excise Tax	7.1-4-3-2; 7.1-4-4-3; 7.1-4-4.5-3

SEA 149

SEA 149: Tobacco Sales

- Effective 7/1/2024
- Prohibits a retail establishment from holding more than one active tobacco sales certificate for a single location at any time
- Prohibits a tobacco sales certificate from being issued to certain persons (special disqualifications)
- Adds requirements if a majority interest in a business that holds a tobacco sales certificate is sold
- Specifies that an employee of a certificate holder must possess a valid state or U.S. issued driver's license or ID card in order to sell tobacco products and must display it upon request
- Provides that a person who recklessly, knowingly, or intentionally sells a tobacco product without a valid certificate commits a Class C infraction.
- Makes it a Class C misdemeanor for a person to operate a tobacco and vaping business within 1,000 feet of school property.

SEA 149: Tobacco Sales

Sale or Change of Ownership Requirements

Ind. Code 7.1-3-18.5-3.2

- If majority ownership of a business that holds a tobacco sales certificate is sold or transferred:
 - (1) New owners must apply for new certificate
 - (2) The prior certificate is void upon issuance of the new certificate or 90 days from date of sale, whichever is sooner

Ind. Code 7.1-3-18.5-2

- When applying for a new certificate following sale or purchase of business, applicant must provide:
 - (1) If new ownership of business is business entity, articles of incorporation or organization, or any other formation documents
 - (2) If new owners of business are individuals, sales/purchase agreement, or affidavit signed by applicant concerning sale/purchase of business, including name and addresses of seller and purchaser
 - (3) The certificate held by previous ownership of the business.

SEA 149: Tobacco Sales

Special Disqualifications

- New section of Indiana Code (IC 7.1-3-18.5-2.4) sets forth special disqualifications for all tobacco certificate owners
 - Intent was to mirror the special disqualifications for alcohol permits
 - Creates regulatory consistency
- Requires applicants to make sworn verification that ALL owners satisfy requisite qualifications
- Apply to applications received on or after July 1, 2024

SEA 149: Tobacco Sales

The ATC **shall** not issue a tobacco sales certificate to following persons:

- 1) A person without lawful status (as defined in IC 9-13-2-92.3)
- 2) A person convicted within 5 years before application of:
 - a) A federal crime having a sentence of at least one (1) year;
 - b) A Level 1, Level 2, Level 3, Level 4, or Level 5 Felony; or
 - c) A crime in other state with penalty equal to that of Level 1—5 Felony
****Does not apply to convictions that have been expunged per IC 35-38-9****
- 3) A person who does not meet at least one of following:
 - a) Owns premises to which certificate applicable
 - b) Holds valid lease on premises at time of application, effective for duration of period sells tobacco
 - c) Has franchise agreement with franchisor that owns premises OR has bona fide lease for term certificate is to be issued
- 4) A person whose business is conducted by manager or agent (unless manager or agent possess same qualifications required for issuance of a tobacco sales certificate)

SEA 149: Tobacco Sales

The ATC **shall** not issue a tobacco sales certificate to the following persons:

- 5) A minor*
- 6) A person *non compos mentis*
- 7) A person who has held and had revoked a permit or certificate of any type issued IC 7.1 within one (1) year prior to date of application for tobacco sales certificate
- 8) A person who has made application for a permit or certificate of any type issued under this title within one (1) year prior to date of application for certificate that was denied for non-technical reasons

* Only exception is for minor who is a stockholder in a corporation

SEA 149: Tobacco Sales

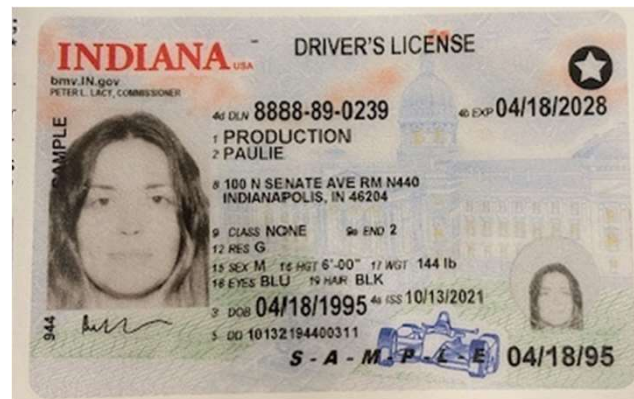
Unlawful Sales

- New section of Indiana Code (IC 7.1-5-10-26) establishes a new penalty for unlawful sales of tobacco products
- Strengthens ability to enforce tobacco sales certificate requirement
 - IC 7.1-3-18.5-1 states that a tobacco sales certificate is required to sell (or distribute in exchange for consideration) a tobacco product or electronic cigarette at retail without a valid tobacco sales certificate issued by the ATC.
 - IC 7.1-3-18.5-7 states that a person who is required to hold a certificate and who sells or distributes tobacco products or electronic cigarettes at retail without a valid certificate commits a Class A infraction.
 - IC 7.1-5-10-26 (NEW) states that a person who recklessly, knowingly, or intentionally sells a tobacco product without a valid tobacco sales certificate commits a Class C infraction.
 - Applies regardless of whether tobacco product is sold at retail or not and has a broader scope than existing authority.

SEA 149: Tobacco Sales

Employees of Certificate Holders (IC 7.1-3-18.5-2)

- Employees must hold a valid federal or state-issued ID in order to sell tobacco products
- Employees must produce ID upon request of a law enforcement official (including Excise officer)
- If an employee does not have ID in possession, must produce evidence of valid ID within five (5) days
- If an employee is unable to produce satisfactory ID, the ATC may impose a civil penalty on the holder of the tobacco sales certificate



SEA 149: Tobacco Sales

- Tracking employees to ensure lawful work status
- Tracking employees with history of violations
- Identifying and reporting human trafficking
- Assisting Department of Labor with wage and hour investigations



SEA 149: Tobacco Sales

Distance from School Property (IC 35-46-1-11.4)

- As of July 1, 2024, new tobacco/vaping businesses are not eligible for a certificate if premises is located within 1,000 feet of school property
 - Tobacco and vaping business = retail establishment in which tobacco products, e-cigarettes, and e-liquid account for at least 85% of gross sales
 - Measured from nearest point of business and school property
- “School property” means any building or structure owned by a school corporation or a public/private elementary or secondary school
 - Includes grounds adjacent to a school building

SEA 149: Tobacco Sales

- Restriction applies to new vape/tobacco businesses operating after July 1, 2024
 - No impact of existing certificate holders
 - No impact on existing businesses at time of future transfer of ownership
- Restriction defined by distance from “school property” rather than distance from “public or private elementary or secondary school”
 - Includes more facilities oriented toward children
- Intent is to reduce prohibited sales of tobacco products to minors by limiting new tobacco/vaping businesses from operating near places children are present

An Overview of Alcohol Excise Taxes

Beer & Malt Beverage Excise Tax

- What is **beer**?
 - An alcoholic beverage obtained by the fermentation of: (1) an infusion or decoction of barley malt or other cereal and hops in water; or (2) cereal byproducts.
- What is **flavored malt beverage**? (must meet all three elements)
 - An alcoholic beverage made from a malt beverage base that is flavored with aromatic essences and other flavorings... that possesses a character and flavor distinctive from the malt beverage base
 - The label, packaging, container, and any advertising or depiction of the alcoholic beverage disseminated or available in Indiana does not contain any of the following words: beer, lager, pilsner, stout, porter, ale, cider, framboise, lambic, draft, liquor, bitter, brew.
 - May contain the words “flavored beer”
 - The alcoholic beverage creates no foam that gives the appearance of beer when poured from its container.

Beer & Malt Beverage Excise Tax

- Rate of tax
 - Eleven and one-half cents (\$0.115) per gallon imposed upon the sale of beer or flavored malt beverage
- Who is responsible for paying tax?
 - A **brewer** is liable for the beer excise tax on the sale or gift of beer or flavored malt beverage by the brewer to a person within Indiana.
 - A **beer wholesaler** is liable for the beer excise tax on the sale or gift of beer or flavored malt beverage received from a brewer located outside of Indiana.
 - A **wine wholesaler** is liable for the beer excise tax on the sale or gift of flavored malt beverage within Indiana.

Hard Cider Excise Tax

- What is **hard cider**?
 - An alcoholic beverage that: (1) is made from the normal alcoholic fermentation of the juice of sound, ripe apples; and (2) contains at least 0.5% alcohol by volume but no more than 7% alcohol by volume.
 - Includes flavored, sparkling, or carbonated cider and cider made from condensed apple.
- Rate of tax
 - Eleven and one-half cents (\$0.115) per gallon imposed on manufacture and sale or gift of hard cider within Indiana.
- Persons liable for tax
 - A **vintner, farm winery, wine wholesaler, direct wine seller, beer wholesaler**, dining car permittee, or boat permittee is liable for paying the excise taxes on the hard cider that is manufactured or imported into state of Indiana.

Wine Excise Tax

- What is **wine**?
 - An alcoholic beverage obtained by the fermentation of the natural sugar content of fruit, fruit juice, or other agricultural products containing sugar, including necessary additions to correct defects due to climatic, saccharine, and seasonal conditions, and also the alcoholic fortification of the beverage.
 - Includes hard cider, except for excise tax purposes.
- Applicability
 - Wine that contains less than 21% alcohol by volume (ABV)
 - Wine that contains 15% or less of alcohol by volume that is mixed with carbonated water or potable ingredients (or both) which is suitable for immediate consumption from original container.

Wine Excise Tax

- Rate of tax
 - Forty-seven cents (\$0.47) per gallon of wine manufactured and sold or gifted within Indiana.
- Persons liable for tax
 - A **vintner, farm winery, wine wholesaler, direct wine seller**, dining car permittee, or boat permittee is liable for wine excise tax on wine manufactured or imported in the state of Indiana.

Liquor Excise Tax

- What is **liquor**?
 - An alcoholic beverage containing alcohol obtained by distillation.
 - The term also means a wine that contains 21% or more of alcohol by volume.
 - Does not include industrial alcohol.
- Rate of tax
 - Two dollars and sixty-eight cents (\$2.68) per gallon of liquor or wine that contains 21% or more alcohol by volume that is sold or gifted within Indiana.

Liquor Excise Tax

- Persons liable for tax
 - An **artisan distiller, distiller, rectifier, liquor wholesaler, vintner, wine wholesaler**, dining car permittee, or boat permittee is liable for liquor excise tax.
- Exceptions:
 - Does not apply to the sale and delivery of liquor or wine that contains 21%+ outside the state of Indiana
 - Does not apply to the sale of wine to a pastor, rabbi, or priest for sacramental or religious purposes only.

SEA 228 & HEA 1120

SEA 228 & HEA 1120

- Purpose was to clarify who is responsible for collecting and remitting tax when multiple permittees involved in transaction
- Code was not clear before this
- **Should hopefully not create any substantive changes to anyone**

SEA 228 & HEA 1120

- IC 7.1 is a 1973 recodification of IC 7, which itself was a recodification of code that was originally enacted as part of the Alcohol Beverage Act of 1935
- Much of the language in IC 7.1 has not substantially changed since various provisions added by Acts in the 1930's and 40's
- Example:
 - IC 7.1-4-3-5: "The liquor excise tax shall not apply to the sale for delivery outside this state, or the withdrawal for sale for delivery outside this state, of liquor and wine that contains more than twenty-one percent (21%) of absolute alcohol reckoned by volume. The liquor excise tax shall not apply to the sale or withdrawal for sale of wine to a pastor, rabbi, or priest for sacramental or religious purposes only."
 - Act of 1935: "The excise tax hereinabove provided, however, shall not apply to or be payable on the sale for delivery outside of the State of Indiana, or withdrawal for sale for delivery outside of the State of Indiana of such wine tonics and/or alcoholic spirituous beverages, including wines, containing more than twenty-one per centum (21%) of absolute alcohol (reckoned by volume and not by weight); nor shall it apply to or be payable on the sale or withdrawal for sale of wine to any pastor, rabbi, and/or priest for sacramental or religious purposes only."

SEA 228 & HEA 1120

- Language in IC 7.1-4-3-2, 7.1-4-4-3, and 7.1-4-4.5-3:
 - The [tax] shall be [paid by/levied against] [holders of permits] to which the tax is applicable and that is manufactured or imported by the person into this state. However, the same article shall be taxed only once for [tax] purposes.
- This does not address situations where liquor, wine, and cider products are transferred among multiple permittees, including when the product is transferred from a producer/supplier outside of Indiana.
- DOR Special Tax Division frequently encountered confusion as to who was responsible for the excise tax.

SEA 228 & HEA 1120

- Solution: Use language from IC 7.1-4-2-2:
 - (a) Except as provided in subsections (b) and (c), a brewer is liable for the beer excise tax on the sale or gift, or withdrawal for sale or gift, of beer or flavored malt beverage by the brewer to a person within Indiana.
 - (b) In the case of a beer wholesaler receiving beer or flavored malt beverage from a brewer located outside of Indiana, the beer wholesaler, not the brewer, is liable for the beer excise tax imposed upon the transaction.
 - (c) In the case of a wine wholesaler receiving, selling, or giving flavored malt beverage within Indiana, the wine wholesaler, not the brewer, is liable for the beer excise tax imposed upon the transaction.

SEA 228 & HEA 1120

- Subsections (b) and (c) from IC 7.1-4-2-2 were essentially added to 7.1-4-3-2, 7.1-4-4-3, and 7.1-4-4.5-3.
- The provisions added in SEA 228 are intended to clarify which Indiana permittee is responsible for remitting the excise tax in various scenarios where liquor, wine, and cider products are transferred among multiple permittees, including when the product is transferred from a producer/supplier outside of Indiana.
- Similar to what is in the OTP tax chapter providing that the tax is owed by the distributor who “first receives the tobacco products or alternative nicotine products in Indiana in the case of a distributor or distributor transactions.”

SEA 228 & HEA 1120

- New subsection (d)
 - Clarifies that nothing in the provisions of the law pertaining to the collection of these taxes should be construed to authorize an otherwise unlawful sale of liquor in Indiana or relieve an out-of-state seller from having to obtain a permit described in subsections (a) of these sections that the out-of-state seller is required to obtain under the alcohol article prior to the sale of liquor in Indiana.

Example: Who pays the tax in this scenario?

- Indiana Manufacturer (located in the State of Indiana) manufactures pure liquor, and sells the pure liquor to Indiana Distiller, who produces and sells finished liquor product to Indiana Wholesaler. The entire transaction chain occurs within the State of Indiana.
- Manufacturer's liquor does not meet the definition of liquor under IC 7.1-1-3-21 ("an alcoholic beverage containing alcohol obtained by distillation. . . . However, the term does not include industrial alcohol").
- The new language would mean that Distiller is the first permittee in line and must collect the tax, even if they sell to another permittee, and any other sale down the line no longer needs to collect the tax.
 - NOTE: if the alcohol being transferred is fit for human consumption and thus meets the definition of an "alcoholic beverage", then the Indiana Manufacturer would be liable for the excise taxes.



Questions?

- Collin Davis (DOR)
 - CDavis@dor.IN.gov
 - (317) 233-5209
- Chris Serak (ATC)
 - cserak@atc.in.gov
 - 317-232-2462
- Ashley Merritt (ATC)
 - amerritt@atc.in.gov
 - 317-232-2469

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