



Wine (Non-grape Wine Levy) Order 2008

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 11th day of August 2008

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to sections 111 and 119 of the Wine Act 2003, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Agriculture, makes the following order.

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Order

- 1 Title**
This order is the Wine (Non-grape Wine Levy) Order 2008.

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

3 Interpretation

In this order, unless the context requires another meaning,—

association means the industry organisation known on the commencement of this order as Fruit Wine & Cider Makers Association of New Zealand Incorporated

cider means the product prepared from the complete or partial fermentation of apple juice

fruit wine or vegetable wine means the product prepared from the complete or partial fermentation of any fruit, vegetables, grains, cereals, or preparations of fruit, vegetables, grains, or cereals, other than that produced solely from grapes

grape wine means the product of the complete or partial fermentation of fresh grapes, or a mixture of that product and products derived solely from grapes

GST means any goods and services tax payable under the Goods and Services Tax Act 1985

levy means the levy imposed by clause 4

levy money means money paid under this order as a levy

levy year means,—

- (a) for the first levy year, the period starting on the commencement of this order and ending on 30 September 2009;
- (b) for every other levy year, a period of 12 months starting on 1 October and ending on 30 September

mead means the product prepared from the complete or partial fermentation of honey

non-grape wine—

- (a) means any fruit wine or vegetable wine (including cider or perry) or mead; and
- (b) includes any volume of wine or mead described in paragraph (a) that forms part of another drink; but
- (c) does not include grape wine

perry means the product prepared from the complete or partial fermentation of pear juice

produced, in relation to non-grape wine, means the final production of the wine before it is—

- (a) sold for consumption in New Zealand as a drink or part of another drink; or
- (b) exported as a drink or part of another drink

winery means a business undertaking that, for reward or for the purposes of trade, produces non-grape wine.

4 Levy imposed

- (1) A levy is imposed on all non-grape wine produced in New Zealand and—
 - (a) sold for consumption in New Zealand as a drink or part of another drink; or
 - (b) exported as a drink or part of another drink.
- (2) However, the levy is not imposed on non-grape wine produced in New Zealand and used for research by facilities the association recognises as research facilities.

Payment of levy

5 Levy to be paid to association

The levy is payable to the association.

6 Wineries primarily responsible for paying levy

A winery that produces non-grape wine is primarily responsible for paying any levy on the wine.

Rate of levy

7 Levy to be paid at single rate

The levy is to be paid at a single rate.

8 Basis of calculation of levy

- (1) The levy payable in a levy year is to be calculated on the basis of the volume (in litres) of non-grape wine that, in that levy year, is—
 - (a) sold for consumption in New Zealand as a drink or part of another drink; or
 - (b) exported as a drink or part of another drink.

- (2) As soon as practicable after the end of a levy year, the association must send each winery a return on which the winery must declare—
- (a) the volume (in litres) of non-grape wine that the winery produced in that levy year; and
 - (b) the volume (in litres) of non-grape wine that the winery produced (at any time) and that was, in that levy year,—
 - (i) sold for consumption in New Zealand as a drink or part of another drink; or
 - (ii) exported as a drink or part of another drink; and
 - (c) the levy payable by the winery for that levy year.

9 Actual rate of levy

- (1) The actual rate of levy for the first levy year is fixed at \$0.01 per litre (exclusive of GST).
- (2) The association must fix the actual rate of levy for each later levy year, in accordance with its rules, at the annual general meeting or a special general meeting in the previous levy year.
- (3) The rate of levy may not be fixed for a later levy year unless either—
- (a) the rate is no greater than the rate for the previous levy year; or
 - (b) the rate is approved by wineries at the annual general meeting or special general meeting and either—
 - (i) increases the rate from the previous levy year by no more than the annual percentage increase in the Consumers Price Index (All Groups) published by Statistics New Zealand most recently before the meeting; or
 - (ii) is approved by the Minister of Agriculture.

10 Previous rate to apply

If the association does not fix the levy rate before the start of a levy year, the levy rate for that year is the rate most recently fixed under clause 9.

11 Notification of rate of levy

As soon as practicable after a rate of levy is fixed for any levy year, the association must notify the rate—

- (a) in the *Gazette*; and
- (b) by newsletter to all potential levy payers known to the association.

*Time for payment and maximum and minimum
levy payments*

12 When levy payable

- (1) The levy must be paid annually.
- (2) The levy—
 - (a) is due for payment on the day on which a winery receives a return from the association under clause 8(2); and
 - (b) must be paid no later than the 20th day of the month after the month in which the return is received.

13 Additional levy payable if levy not paid in time

If a winery does not pay any amount of levy by the close of the latest day for payment, the winery must pay additional levy of 10% of the unpaid amount.

14 Maximum and minimum levy payments

- (1) The maximum amount of levy payable by a winery in a levy year is \$1,000.
- (2) The minimum amount of levy payable by a winery in a levy year is \$100.
- (3) The amounts specified in this clause do not include—
 - (a) GST; or
 - (b) any additional levy payable under clause 13.

Spending of levy money

15 Association must spend levy money

- The association must—
- (a) spend all levy money paid to it;
 - (b) invest the levy money until it is spent.

16 Association must consult on spending levy money

- (1) The association must, at each annual general meeting, present its accounts and consult wineries on how the association is to spend the levy money.
- (2) A winery that is not a member of the association is entitled to speak at the annual general meeting on matters relating to how the association is to spend the levy money.
- (3) The association must take all reasonable steps to ensure that all persons primarily responsible for paying the levy receive a copy of the association's annual report in accordance with section 25(5) of the Commodity Levies Act 1990.

17 Purposes for which levy money may be spent

- (1) The association may spend the levy money for the following purposes relating to non-grape wine:
 - (a) product research and development:
 - (b) market research and development:
 - (c) promotion of non-grape wine:
 - (d) quality assurance:
 - (e) education:
 - (f) day-to-day administration of the association.
- (2) The association must not spend any levy money on commercial or trading activities unless the Minister of Agriculture gives written approval in accordance with section 10(4) and (5) of the Commodity Levies Act 1990.

*Record-keeping and information requirements***18 Records**

- (1) A winery must, for every levy year, keep records of—
 - (a) the volume (in litres) of non-grape wine that the winery produced in that levy year; and
 - (b) the volume (in litres) of non-grape wine that the winery produced (at any time) and that was, in that levy year,—
 - (i) sold for consumption in New Zealand as a drink or part of another drink; or
 - (ii) exported as a drink or part of another drink; and
 - (c) each amount of levy paid to the association and the date of each payment.

- (2) The association must, for every levy year, keep records of—
 - (a) each amount of levy money paid to it; and
 - (b) the person who paid each amount and the date the amount was received; and
 - (c) how it invested levy money (if at all); and
 - (d) how and when it spent levy money.
- (3) The records required by this clause must be retained for at least 3 years after the end of the levy year to which they relate.

19 Confidentiality of information

- (1) No officer or employee of the association, or any person involved in collecting levy money, may disclose any information obtained—
 - (a) under or because of this order; or
 - (b) under the Wine Act 2003 or the Commodity Levies Act 1990 in relation to this order.
- (2) Subclause (1) does not affect or prevent the disclosure of information—
 - (a) to an officer or employee of the association; or
 - (b) with the consent of every identifiable person to whom it relates; or
 - (c) for statistical or research purposes, if the information is disclosed in a form that does not identify any person; or
 - (d) that is required by law.
- (3) Subclause (1) does not affect or prevent the disclosure of information for the purposes of—
 - (a) complying with section 17(1) or 25 of the Commodity Levies Act 1990; or
 - (b) giving evidence in any legal proceedings taken under or in relation to this order; or
 - (c) issuing invoices for, or collecting, the levy.

Miscellaneous

20 Conscientious objectors

- (1) A winery that objects on conscientious or religious grounds to paying an amount of levy in the manner provided for in this order may pay the amount to the chief executive of the Ministry of Agriculture and Forestry.

- (2) The chief executive must pay the amount to the association.

21 Remuneration of auditors

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the association at a rate determined by the Minister of Agriculture after consultation with the association.

Mediation of disputes

22 Appointment of mediators

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) Any party to a dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) If asked under subclause (2), the President (or a person authorised by the President) may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 29.

23 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) agreed to by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (or a person authorised by the President) must—
 - (a) fix the remuneration to be paid to the mediator; and
 - (b) specify how much of that remuneration (if any) each party must pay.
- (3) A party must pay to the mediator any amount specified as payable by that party under subclause (2)(b).

24 Conference to resolve dispute

- (1) A mediator may organise and preside at 1 or more conferences between the parties to a dispute to try to resolve the dispute.
- (2) Every conference must be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

25 Conference must be held in private

Only the mediator and the parties to a dispute may attend a conference, unless clause 26 applies.

26 Representatives

A mediator may allow a representative of any party to a dispute to attend a conference if the mediator is satisfied that it is appropriate in the circumstances.

27 Right to be heard

The following persons may be heard at a conference:

- (a) every party to the dispute; and
- (b) every representative of a party allowed by the mediator to attend the conference.

28 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference to verify the evidence by statutory declaration.

29 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the dispute is not resolved at a conference; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.

- (2) A mediator who resolves a dispute under subclause (1) must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the mediator's decision.

30 Costs of mediation

Each party must pay the party's own costs in relation to the mediation.

31 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 29 may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal—
 - (a) within 28 days after the decision is made; or
 - (b) within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) fix the time and place for the hearing of the appeal; and
 - (b) notify the time and place to the appellant and the other parties to the dispute; and
 - (c) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) The District Court may confirm, vary, or reverse the mediator's decision.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the mediator's decision.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

It imposes a levy on all non-grape wine produced in New Zealand and either sold for consumption in New Zealand as a drink (or part of another drink) or exported as a drink (or part of another drink). The winery that completes the final production of non-grape wine is responsible for paying the levy on the wine. The levy is payable to Fruit Wine & Cider Makers Association of New Zealand Incorporated.

The order expires 6 years after it is made (because of section 13(1) of the Commodity Levies Act 1990), unless it is revoked or extended before then.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 14 August 2008.

This order is administered by the Ministry of Agriculture and Forestry.
