

Version
as at 9 November 2021



Wine (Non-grape Wine Levy) Order 2015 (LI 2015/260)

Wine (Non-grape Wine Levy) Order 2015: revoked, on the close of 8 November 2021, pursuant to section 13(1) of the Commodity Levies Act 1990 (1990 No 127).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 9th day of November 2015

Present:

The Right Hon John Key presiding in Council

Pursuant to sections 111 and 119 of the Wine Act 2003, His Excellency the Governor-General makes the following order, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Primary Industries given in accordance with sections 5 and 6 of the Commodity Levies Act 1990 (as applied and modified by section 111 of the Wine Act 2003).

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Wine (Non-grape Wine Levy) Order 2015.

2 Commencement

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

Order: confirmed, on 17 December 2016, by section 18(a) of the Subordinate Legislation Confirmation Act 2016 (2016 No 103).

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

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 2016:

(b) for each later levy year, a period of 12 months starting on 1 October and ending on 30 September in the following year

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

produce, in relation to non-grape wine, means to carry out 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.

Levy imposed

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.

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 the levy on the non-grape wine.

Setting and 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

The levy payable for 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.

9 Actual rate of levy

- (1) The actual rate of levy for the first levy year is fixed at \$0.001 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 for Primary Industries.

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) Within 30 days after the end of each levy year, the association must send each winery a return that the winery must complete in accordance with clause 18.
- (3) The levy—
 - (a) is due for payment on the day on which a winery receives a return from the association under subclause (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 last day for payment, the winery must pay an 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 Purposes for which levy money may be spent

- (1) The association may spend the levy money only 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) *See* section 10 of the Commodity Levies Act 1990 for further rules about the use of levy money.

17 Association must consult on spending levy money

The association must, at each annual general meeting,—

- (a) present its accounts and consult wineries on how the association is to spend the levy money;
- (b) allow wineries to speak on all matters relating to how the association is to spend the levy money.

Record-keeping and information requirements

18 Wineries must provide returns to association

- (1) A winery must provide a return to the association no later than the last day for payment of the levy under clause 12.
- (2) The winery must declare on the return—
 - (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.

19 Wineries and association must keep records

- (1) A winery must, for every levy year, keep records of—
 - (a) the information declared in the return under clause 18(2)(a) and (b) for that levy year; and
 - (b) 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 winery that 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.

20 Confidentiality of information

- (1) No officer, employee, or agent of the association may disclose any information obtained, or obtained as a result of actions taken,—
 - (a) under 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, employee, or agent 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; or
 - (e) for the purposes of—
 - (i) complying with section 17(1) or 25 of the Commodity Levies Act 1990; or

- (ii) giving evidence in any legal proceedings taken under or in relation to this order; or
- (iii) issuing invoices for, or collecting, the levy.

Miscellaneous

21 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 for Primary Industries.
- (2) The chief executive must pay the amount to the association.

22 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 for Primary Industries after consultation with the association.

Dispute resolution

23 Mediation of disputes

- (1) This clause and clauses 24 to 33 apply to any dispute about—
 - (a) whether a winery is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) If a dispute arises that the parties to the dispute are unable to resolve by themselves, the parties must follow the mediation process set out in clauses 24 to 33.

24 Appointment of mediator

- (1) A 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.
- (2) If asked, the President (or a person authorised by the President) may appoint a person to resolve the dispute by mediation.
- (3) 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 31.

25 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) as agreed 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 an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator the amount or amounts—
 - (a) agreed under subclause (1); or
 - (b) fixed and specified under subclause (2).

26 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.

27 Representatives

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

28 Conference must be held in private

The only people who may attend a conference organised by the mediator are—

- (a) the parties; and
- (b) the mediator; and
- (c) representatives whom the mediator allows to attend.

29 Right to be heard

Each person who attends a conference may be heard at the conference.

30 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 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.

31 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.

32 Costs of mediation

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

33 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal within 28 days after the decision is made, or 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.

Michael Webster,
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, which comes into force on the 28th day after the date of its notification in the *Gazette*, 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 levy is set at \$0.001 per litre for the first levy year (which ends on 30 September 2016) but may be varied for subsequent levy years in certain conditions. The minimum levy payable per winery is \$100 per year and the maximum levy payable per winery is \$1,000 per year. The winery that carries out the final production of non-

grape wine is primarily responsible for paying the levy on the wine. The levy is payable to Fruit Wine & Cider Makers Association of New Zealand Incorporated.

Under section 12 of the Commodity Levies Act 1990, this order will be deemed to be revoked at the close of 31 December 2016 unless it is confirmed by an Act of Parliament passed on or before that date. If this order is confirmed, it will be deemed to be revoked at the end of 8 November 2021, unless it is extended under section 13(2) of the Commodity Levies Act 1990.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 12 November 2015.

Notes

1 *General*

This is a consolidation of the Wine (Non-grape Wine Levy) Order 2015 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Subordinate Legislation Confirmation Act 2016 (2016 No 103): section 18(a)

Commodity Levies Act 1990 (1990 No 127): section 13