

**Reprint  
as at 21 February 2011**



**Wine (Grape Wine Levy) Order  
2005**

(SR 2005/27)

Wine (Grape Wine Levy) Order 2005: revoked, on 21 February 2011, pursuant to section 13 of the Commodity Levies Act 1990 (1990 No 127).

Silvia Cartwright, Governor-General

**Order in Council**

At Wellington this 21st day of February 2005

Present:

Her Excellency the Governor-General in Council

Pursuant to section 111 of the Wine Act 2003, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister of Agriculture after being satisfied of the matters set out in section 5

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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

of the Commodity Levies Act 1990 (as applied to and modified by section 111 of the Wine Act 2003), makes the following order.

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## **Order**

### **1 Title**

This order is the Wine (Grape Wine Levy) Order 2005.

### **2 Commencement**

This order comes into force on 1 April 2005.

### **3 Interpretation**

(1) In this order, unless the context otherwise requires,—

**Act** means the Wine Act 2003

**grape wine** has the same meaning as in the Act but, for the purposes of this order, is limited to grape wine made from wine grapes grown in New Zealand

**grape wine component** means the volume of grape wine contained in a grape wine product

**grape wine product** means a wine product in which the wine content is solely grape wine

**Institute** means the body that, on the commencement of this order, was known as the Wine Institute of New Zealand Incorporated

**levy year**—

(a) means a period of 12 months beginning on 1 July and ending on 30 June; and

- (b) includes the period beginning on the commencement of this order and ending on 30 June 2006

***New Zealand Wine Grower*** means the publication that was, before the commencement of this order, published under that name and,—

- (a) if the *New Zealand Wine Grower* ceases to be published, means any publication that replaces it; or
- (b) if the *New Zealand Wine Grower* ceases to be published and no publication replaces it, means a publication specified for the purposes of this order by the Minister by notice in the *Gazette*

**winery** means a person whose business is, or includes,—

- (a) the making and sale of grape wine or grape wine products; or
- (b) the sale of grape wine or grape wine products that have been made on that person's behalf.
- (2) Unless the context otherwise requires, terms and expressions that are used but not defined in this order but that are defined in the Act have the same meaning as in the Act.

#### **4 Levy imposed**

- (1) A levy is imposed on—
- (a) grape wine; and
- (b) the grape wine component of grape wine products.
- (2) Despite subclause (1), no levy is imposed in relation to sales of grape wine or grape wine products between wineries in New Zealand.

#### *Responsibility for payment of levy*

#### **5 Wineries primarily responsible for paying levy**

- (1) The winery is primarily responsible for paying the levy.
- (2) No winery is exempt from paying the levy.

#### *Determination of levy by Institute*

#### **6 Basis of calculation of levy**

The levy is to be calculated on the basis of the volume, in litres, of grape wine (including the grape wine component of grape

wine products) sold by the winery in each quarter of a levy year.

**7 Levy to be paid at single rate**

The levy is to be paid at a single rate.

**8 Maximum rate of levy**

- (1) The maximum rate of the levy is 3.5 cents per litre of grape wine (including the grape wine component of grape wine products) sold.
- (2) Subclause (1) is subject to the minimum levy payment specified in clause 10.

**9 Institute must fix actual rate of levy**

- (1) Subject to subclause (2), the Institute must fix the actual rate of the levy—
  - (a) on or before 30 April 2005, for the levy year beginning on the commencement of this order; or
  - (b) before the beginning of the levy year, for any levy year beginning on or after 1 July 2006.
- (2) If the Institute does not fix the actual rate of levy for a levy year beginning on or after 1 July 2006, the rate last fixed under subclause (1)(a) or (b), as appropriate, applies to the new levy year.
- (3) The Institute may use any means by which it can lawfully make decisions to fix the actual rate of the levy.

**10 Minimum levy payment**

The minimum levy payment is \$400 per levy year, payable in accordance with clause 15.

**11 Notification of rate of levy**

As soon as practicable after the rate of levy has been fixed for a levy year, the Institute must notify the rate—

- (a) by notice in the *New Zealand Wine Grower*; and
- (b) by notice in the *Gazette*; and
- (c) by notice in 1 or more major metropolitan daily newspapers; and

- (d) directly to all wineries whose postal addresses are known to the Institute.

## **12 GST excluded**

The amounts referred to in this order are exclusive of any goods and services tax that may be payable.

### *Payment of levy*

## **13 Levy to be paid to Institute**

- (1) The industry organisation to which the levy is to be paid is the Institute.
- (2) Every levy payment must be accompanied by a return stating the volume of grape wine (including the grape wine component of grape wine products) sold during the period to which the payment relates.
- (3) Subclause (1) is subject to clause 26.

## **14 When levy payable**

- (1) Subject to clause 15, the levy payable under this order—
  - (a) must be paid quarterly, based on the volume of grape wine (including the grape wine component of grape wine products) sold during the relevant quarter; and
  - (b) (except in the case of sales referred to in subclause (2)) becomes due for payment on the day on which the grape wine or grape wine product is sold.
- (2) The levy for sales during the period beginning on the commencement of this order and ending on the date on which the actual rate of levy is set in accordance with clause 9(1)(a)—
  - (a) becomes due for payment on the date on which the actual rate of levy is set; and
  - (b) is payable at the rate set in accordance with clause 9(1)(a).
- (3) The latest dates for the payment of the levy are—
  - (a) 31 October, for sales during the period beginning on 1 July and ending on 30 September;
  - (b) 31 January, for sales during the period beginning on 1 October and ending on 31 December;

- (c) 30 April, for sales during the period beginning on 1 January and ending on 31 March;
  - (d) 31 July, for sales during the period beginning on 1 April and ending on 30 June.
- (4) The latest date for the payment of the levy for sales during the period beginning on the commencement of this order and ending on 30 June 2005 is 31 July 2005.
- (5) Subclause (4) is for the avoidance of doubt.

**15 Payment of minimum levy**

If a winery believes that its total annual levy liability will not exceed the minimum amount specified in clause 10, it may—

- (a) make a single payment of \$400 on or before 31 October of the relevant levy year; or
- (b) make one payment of \$100 on or before each of the latest dates specified in clause 14(3).

**16 Adjustment if levy liability exceeds minimum payment**

- (1) Subclause (2) applies if—
- (a) a winery makes the minimum levy payment specified in clause 10; and
  - (b) the actual levy liability of the winery for the relevant levy year exceeds the amount of that payment.
- (2) At the end of each levy year, the winery must—
- (a) calculate the difference between the minimum levy payment and the actual levy due for the relevant levy year; and
  - (b) pay the amount of that difference to the Institute.
- (3) The latest date for the payment referred to in subclause (2)(b) is 31 July of the year in which the relevant levy year ends.

**17 Penalty for late payment**

If any levy money (or any goods and services tax payable on that money) has not been paid on or before the latest date for payment specified in clause 14(3) or (4) or clause 16(3), the Institute may add a penalty of 10% to the amount owing (including any previous penalties) at the end of each month during which the debt remains outstanding.

**18 Refunds**

- (1) If the Institute is satisfied that an amount paid to it as a levy has been overpaid, or paid in error, the Institute must refund that amount.
- (2) However, the Institute is not liable to make a refund under subclause (1) unless it is satisfied that the person claiming the refund—
  - (a) is entitled to the refund; and
  - (b) has not already recovered the amount paid.
- (3) To enable the Institute to satisfy itself that a refund under subclause (1) is due, the Institute may—
  - (a) require the person claiming the refund to provide levy returns or other information justifying the refund; and
  - (b) check or determine the amount of the refund; and
  - (c) verify the returns and information provided under subclause (3)(a) in any way the Institute thinks fit.

*Expenditure of levy money***19 Institute must spend levy money**

- (1) The Institute must spend or, pending expenditure, invest all levy money paid to it.
- (2) The Institute may pay any amount of levy money to any of its regional associations, which must spend, or pending expenditure, invest all levy money paid to them.
- (3) Expenditure must be for 1 or more of the general purposes described in clause 20.

**20 General purposes for which levy money may be spent**

- (1) The general purposes for which the Institute may spend the levy money must relate to the interests of wineries and include (but are not limited to) the following purposes:
  - (a) collection, analysis, and dissemination of information:
  - (b) market research and development:
  - (c) promotion of grape wine and grape wine products:
  - (d) research and development of viticulture, oenology, and other relevant disciplines:
  - (e) education and training:

- (f) funding activities undertaken on behalf of the grape wine industry by government and other agencies:
  - (g) developing standards, codes of practice, sustainability programmes, and quality assurance programmes:
  - (h) assisting with the implementation of legislation:
  - (i) day-to-day administration of the Institute, including its regional associations:
  - (j) promoting the interests of makers of grape wine and grape wine products.
- (2) Expenditure for any general purpose may be for projects on a national or regional level.
- (3) The Institute must not spend the levy money on commercial or trading activities.

## **21 Consultation on how levy money to be spent**

- (1) At least every 12 months, the Institute must consult wineries on how it proposes to spend levy money and provide the wineries with details of the previous 12 months' expenditure.
- (2) For the purposes of subclause (1), the Institute must—
- (a) communicate with wineries by means of—
    - (i) regular newsletters to all wineries whose postal addresses are known to the Institute; and
    - (ii) advertisements in the *New Zealand Wine Grower*; and
    - (iii) any other manner the Institute thinks fit; and
  - (b) before the Institute's annual general meeting in each year, hold advertised meetings in grape wine producing regions for the purpose of consulting wineries on how levy money is to be spent.
- (3) On completion of the consultation referred to in subclause (1), the Institute must provide wineries with copies of the Institute's approved expenditure and annual plans.

### *Recordkeeping requirements and confidentiality of information*

## **22 Returns**

Every winery must, as soon as is reasonably practicable after receiving the Institute's written request to do so, provide the

Institute with all information required to enable the Institute to calculate the amount of levy payable by the winery under clause 6.

**23 Records to be kept by wineries**

- (1) Every winery must keep records, for each levy year, of—
  - (a) individual sales and the total quantity of grape wine (including the grape wine component of grape wine products) sold in each quarter; and
  - (b) the amount of levy money paid in relation to those sales; and
  - (c) the date the levy money was paid to the Institute.
- (2) The records referred to in subclause (1) must be retained by the winery for at least 2 years after the end of the levy year to which the records relate.

**24 Records to be kept by Institute**

- (1) The Institute must keep records, for each levy year, of all levy money paid to it and,—
  - (a) in relation to each levy payment,—
    - (i) the amount of the payment; and
    - (ii) the date on which it was received by the Institute; and
    - (iii) the name and contact details of the person who paid it; and
  - (b) in relation to levy money that was invested, how, when, and where it was invested; and
  - (c) in relation to levy money that was spent, how and when it was spent.
- (2) The records referred to in this clause must be retained by the Institute for at least 2 years after the end of the levy year in which the levy money was paid, invested, or spent.

**25 Confidentiality of information**

- (1) No officer or employee of the Institute may disclose (except to another officer or employee of the Institute) any information obtained—
  - (a) under or as a result of this order; or

- (b) in relation to this order, under the Act or the Commodity Levies Act 1990.
- (2) Nothing in subclause (1) affects or prevents—
  - (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
  - (b) the production of any statement under section 25 of the Commodity Levies Act 1990; or
  - (c) the giving of evidence in any legal proceedings taken—
    - (i) under or in relation to this order; or
    - (ii) in relation to this order, under or in relation to the Act or the Commodity Levies Act 1990.
- (3) Nothing in subclause (1) prevents the Institute from disclosing or using the information obtained—
  - (a) to enable the Institute’s returning officer, or other person engaged in the election of members or officeholders of the Institute, to—
    - (i) determine voting entitlements; or
    - (ii) count the votes of persons responsible for payment of the levy; or
  - (b) for statistical or research purposes (if the information does not relate to an identifiable person); or
  - (c) if every identifiable person to whom the information relates consents to the disclosure or use.

*Miscellaneous*

**26 Conscientious objectors**

- (1) Any winery that objects on conscientious or religious grounds to the payment to the Institute of an amount of levy money may pay the amount concerned to the Director-General of the Ministry of Agriculture and Forestry (or the chief executive of any other department of State that is for the time being responsible for the administration of this order).
- (2) The Director-General must pay any levies received under subclause (1) to the Institute.

**27 Remuneration of persons conducting compliance audits**

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the Institute

at a rate determined by the Minister after consultation with the Institute.

*Mediation in case of dispute*

**28 Appointment of mediators**

- (1) This clause applies to any dispute concerning—
  - (a) whether a person is required to pay a levy; or
  - (b) the amount of levy payable.
- (2) Any party to the 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 and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (3) The mediator's appointment ends when—
  - (a) the parties resolve the dispute by agreement; or
  - (b) the mediator resolves the dispute under clause 35.

**29 Remuneration of mediators**

- (1) A mediator must be paid the remuneration (by way of fees and allowances) agreed to by the parties to the dispute.
- (2) If the parties 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 to do so) 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 is to pay.
- (3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

**30 Conference**

A mediator may organise a conference to facilitate the resolution of the dispute between the parties.

**31 Time and place of conference**

Every conference organised by a mediator of the parties to a dispute is to be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

**32 Conference to be held in private**

- (1) Subject to subclause (2), only the parties to a dispute and the mediator may attend a conference organised by the mediator.
- (2) Despite subclause (1), a mediator may, if satisfied that in all the circumstances it is appropriate to do so, allow a representative of any party to a dispute to attend a conference.

**33 Right to be heard**

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference of the parties organised by a mediator, may be heard at the conference.

**34 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 of the parties to a dispute to verify his or her evidence by statutory declaration.

**35 Mediator may resolve dispute in certain cases**

- (1) A mediator may resolve a dispute for the parties if—
  - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
  - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If subclause (1) applies, the mediator 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 decision of the mediator.

**36 Costs of mediation**

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

**37 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 35 may appeal to a District Court against the decision.
- (2) An appeal under this clause must be brought by the filing of a notice of appeal within 28 days after the making of the decision to which the appeal relates, or within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
  - (a) serve a copy of the notice of appeal on every other party to the dispute; and
  - (b) fix the time and place for the hearing of the appeal; and
  - (c) notify the appellant and all other parties to the dispute of the time and place for the hearing of the appeal.
- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the court may confirm, vary, or reverse the decision appealed against.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

Rebecca Kitteridge,  
Acting for Clerk of the Executive Council.

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**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 1 April 2005, imposes a levy on grape wine and the grape wine component of grape wine products. However, no levy is imposed in relation to sales of grape wine or grape wine products between wineries in New Zealand.

Levies are payable to the Wine Institute of New Zealand Incorporated by wineries that sell grape wine or grape wine products. Levies are payable quarterly.

The levy is calculated by reference to the amount, in litres, of grape wine (including the grape wine component of grape wine products) sold. A minimum levy payment is also specified.

This order makes provision for how the levy money is used by the Institute, and requires the Institute to consult with wineries before determining how to spend the levy money.

Records relating to the levy must be kept by both the wineries and the Institute. Limits are placed on how the Institute may use the information that comes into its possession during the process of collecting the levy.

Provision is made for mediation of disputes, with a right of appeal to a District Court.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 24 February 2005.

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**Notes****1 General**

This is a reprint of the Wine (Grape Wine Levy) Order 2005. The reprint incorporates all the amendments to this order as at 21 February 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

**2 Status of reprints**

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 How reprints are prepared**

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989***

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint  
(most recent first)*

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

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