

REVENUE ESTIMATING CONFERENCE

TAX: Alcoholic Beverage Excise Tax on Wine

ISSUE: DIRECT WINE SHIPMENTS

BILL NUMBER(S): SB 144

SPONSOR(S): Saunders

MONTH/YEAR COLLECTION IMPACT BEGINS: Upon becoming law.

DATE OF ANALYSIS: March 15, 2006

SECTION 1: NARRATIVE

a. Current Law: Section 561.221, Florida Statutes, provides in-state wineries exceptions to Florida's license scheme allowing a Florida winery to possess licenses in all three (3) tiers (manufacturer, distributor and vendor). Furthermore, section 561.57, Florida Statutes, authorizes vendors to make deliveries away from their place of business of sales actually made at the licensed place of business: provided, telephone or mail orders received at vendor's licensed place of business is construed as a sale actually made at the vendor's licensed place of business. Thus an in-state winery could ship wine directly to a consumer. Section 561.54, F.S., makes it unlawful to make delivery of any alcoholic beverage from outside the state to any person, association of persons, or corporation within the state, except to qualified manufacturers, distributors, exporters, and bonded warehouses in this state. Section 561.545, F.S., further finds any direct shipment of alcoholic beverages by persons in the business of selling alcoholic beverages to residents of this state to be in violation of the statutes. Section 561.14, F.S., requires alcoholic beverage products to pass through a three-tier system before ultimately reaching the consumer. The manufacturer/supplier can only sell to the wholesaler/distributor, who in turn can sell to the vendor/retailer. The retailer then sells to the ultimate consumer. This three-tier system of supplier-distributor-retailer has been in place and guided the flow of alcoholic beverages in Florida and the nation since the repeal of Prohibition in 1933. Penalties for direct shipment of alcoholic beverages to residents of this state are provided for in section 561.545, F.S.

Although the above Florida statutes currently prohibit any shipments of alcoholic beverages going directly to any consumer in Florida, a federal court ruling on shipment of wine from out of state wineries to Floridians precludes enforcement of the ban on direct wine shipments from non-Florida wineries to Florida consumers. The ruling did not, however, limit the state's authority to collect taxes on wine or to enforce the prohibition of the sale of alcoholic beverages, including wine, to a person under the age of 21. The Department of Business and Professional Regulation remains responsible for the regulation of all alcoholic beverages in Florida. The Department's website and the Division of Alcoholic Beverages and Tobacco's website now include language to this affect, and give instruction to both the winery and the individual as to what taxes are required. The websites include a link to the applicable forms to be used and give other useful information pertaining to sales of wine into Florida.

b. Proposed Change: Section 561.585, F.S., would be created to allow certain specific direct shipments of wine to be made to consumers within Florida, while keeping in place the statutes which make other direct shipment of alcoholic beverages to consumers within Florida a violation of law.

Out-of-state entities could be licensed by the State of Florida to ship wine directly to any person who is registered within Florida to receive the shipments. There are various criteria associated with the licensing of the out-of-state shipper and with the in-state recipient.

The out-of-state shipper must:

- Obtain and maintain a current license as a primary American source of supply (PAS), as provided in section 564.045, F.S.
 - Provide a true copy of a current alcoholic beverage license issued by another state. The type of license is not specified such as manufacturer, distributor or vendor.
 - Pay a registration fee of \$100.
 - Renew annually by paying a renewal fee of \$100 and providing a true copy of the other state's current alcoholic beverage license.
 - Place "SIGNATURE OF ADDRESSEE AGE 21 OR OLDER REQUIRED FOR DELIVERY" on the outside shipping label of each package containing wine. There is no current requirement on a Florida vendor shipping alcoholic beverages.
 - Prior to delivery, obtain signature of the recipient after presentation of a valid identification.
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- Report monthly to the division the amount of wine shipped into the state. There is no such requirement for a Florida winery.
 - Pay all excise (and sales) taxes applicable to the shipments of wine into the state.
 - Maintain records of all direct shipments into Florida and allow the state to perform audits of such records.

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- Consent to the jurisdiction of any applicable Florida agency or court concerning enforcement of this law.

Licensure as a primary American source involves the registration of a manufacturer or the source closest in the channel of commerce to the manufacturer. There is only one primary American source for each brand and each brand must have a primary American source. If a winery has already chosen a primary American source for purposes of registering brands and selecting distributors, this winery also cannot be licensed as a primary American source for its brand, as anticipated under this bill. Since section 564.045 F.S., only allows one primary American source, this would prevent the winery that has designated some other entity as its primary American source from being licensed as that brand's primary American source and under this bill, from being licensed as an out-of-state shipper.

For instance, Korbel Champagne has chosen Brown-Forman as its primary American source. Brown-Forman, under this bill, could qualify as an out-of-state shipper. Korbel could not qualify, and thus could not ship wine directly to Florida consumers, since it could not be licensed as a primary American source for those brands provided by Brown-Forman. In another example, because a small winery could only choose one primary American source, its products could not be shipped directly to Florida consumers by more than one shipper.

The in-state recipient must:

- Register and provide sworn statement with the division on prescribed forms.
- Update registration within 30 days after any change.
- Provide full name.
- Provide legal residence address and mailing address, if different.
- Provide telephone number.
- Provide proof of age, to be at least 21 years of age.
- Provide a statement that the wine is for personal use only and not for resale.
- Provide a statement that no more than a total of four cases will be purchased within a calendar year from all out-of-state shippers combined.
- Renew registration every five years at the end of the fifth calendar year.
- Provide any other information deemed necessary by divisional rule.

No such conditions are imposed on Florida wineries.

In addition to penalties provided in section 561.545, F.S., the division may suspend or revoke an out-of-state shipper's license or impose fines for any violation of this section. Any out-of-state shipper or anyone transporting wine from an out-of-state location directly to any person in this state who is under 21 years of age commits a felony of the third degree. Any person who obtains wine from an out-of-state shipper in violation of this section commits a misdemeanor of the second degree.

The bill exempts any charitable organization (holding a current Internal Revenue Code s. 501(c)(3) tax exemption from federal income taxes, and that is exempt from sales and use taxes imposed by chapter 212) from paying any excise tax or sales and use tax on any wine obtained from an out-of-state shipper for purposes of fundraising. All proceeds and profits must be deposited with the organization, and any bottles of wine not sold at the fundraising event must be returned to the out-of-state shippers.

Prohibitions of direct shipments in sections 561.54 and 561.545, F.S., will not apply to direct out-of-state shipments of wine to persons in this state as provided in this new section.

SECTION 2: DESCRIPTION OF DATA AND SOURCES:

- Number of Primary American Source (PAS) registrants, 1,098;
- Population Estimates;
- Fees @ \$100;
- Taxes @ \$2.25 per gallon; and
- Purchase limits – cases per recipient.

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SECTION 3: METHODOLOGY (INCLUDE ASSUMPTIONS AND ATTACH DETAILS): It is uncertain how many of the current Primary American Source of supply (PAS) registrants or others will want to become licensed to ship wine into Florida. It is also uncertain how many consumers in Florida will wish to register as recipients. To estimate these numbers, various methodologies were used.

In this bill, the entity who ships wine directly to a consumer in Florida must be a PAS. Currently, there are 1,098 PAS registrants who sell 30,646 brands into Florida through the normal three-tiered system. It can be estimated that each of the current 1,098 PAS registrants will also become licensed during the first year to ship directly to consumers in Florida. This would provide additional licensing revenue of an estimated \$109,800 annually. With this bill in place, it is estimated that the increase in licensed PAS registrants could substantially increase. In addition to these known PAS registrants, there could be a substantial increase from other entities who wish to register to sell directly to consumers in Florida. For example, there are 4,017 federally licensed wine manufacturers and 7,344 federally licensed wine importers throughout the United States who may wish to become PAS registrants for direct sales into Florida. If each of these become the Florida PAS and sell all of their brands directly to consumers, there could be 11,361 PAS registrants, which would include the 1,098 current Florida PAS registrants. In theory, each of these entities could name a separate agent for each of their brands, and those entities could then become the PAS registrants. As another example, there are 71,373 federally licensed brands for these entities. Should each brand have one specific PAS, there could be as many as 71,373 PAS registrants who could sell wine directly to consumers in Florida. The range of perspective PAS registrants from 1,098 to 71,373 is very broad. However, the range demonstrates the possibilities of direct shipping entities. For this analysis, the lower number of 1,098 PAS registrants is used.

To determine the number of recipient consumers who will register to receive the wine shipments, both population data and business practices can be analyzed. The current estimated population in Florida over 20 years of age is 11,811,100. (The drinking age in Florida is 21, but population information for this analysis was in 5-year increments.) If ½ of 1% of the consuming age population wish to purchase wine via direct shipments, there could be 60,000 recipients. Using business practices when considering the PAS registrants to determine customers, if the 1,098 PAS shippers have 100 direct shipment customers in Florida, and if each of these customers purchase from only one shipper, there could be 109,800 recipients. On the other hand, if the 71,373 estimated PAS registrants each have as few as ten customers exclusively, there could be 713,730 recipients. By using the population scenario for this analysis, it is estimated that approximately 60,000 Florida recipients could be registered to receive direct shipments of wine from licensed shippers during the first year. With the steady increase in Florida population and in PAS registrants, it can be estimated that recipient consumers would increase each year at a proportionate amount.

Revenues are estimated on fee and tax amounts pertaining to the estimated number of licensees and registrants, and the amount of wine allowed by each. An estimated 1,098 out-of-state shippers would each pay the \$100 fee totaling \$109,800 the first year. Given the estimated 60,000 recipients who could purchase the maximum amount allowed, each could purchase 9.51 gallons of wine in the first year, at the excise tax rate of \$2.25 per gallon, totaling as much as \$1,285,200 annually. The 9.51 gallons limit is determined by the allowable 4 cases, which at 2.37753 gallons each, equal 9.51 gallons.

Direct Shipment Estimates			
	<u>FY 06-07</u>	<u>FY 07-08</u>	<u>FY 08-09</u>
Population est.	11,811,100	12,000,800	12,191,500
PAS registrants	1,098	1,176	1,304
Wine Recipients	60,000	60,414	61,803
Fees @ \$100	\$ 109,800	\$ 117,600	\$ 130,400
Taxes @ \$2.25 per gal.	\$ 1,285,200	\$ 1,294,068	\$ 1,323,820
Purchase limits:			
cases per recipient	4	4	4
gallons per recipient	9.51	9.51	9.51

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SECTION 4: PROPOSED FISCAL IMPACT

State Impact—All Funds	FY 2006-07 Annualized	FY 2006-07 Cash	FY 2007-08 Cash
High	N/A	N/A	N/A
Middle:			
Excise Tax (GR)	1,285,200	1,285,200	1,294,068
License Fees (AB&T TF)	109,800	109,800	117,600
Total Funds	1,395,000	1,395,000	1,411,668
Low	N/A	N/A	N/A

SECTION 5: CONSENSUS ESTIMATE (ADOPTED 3 / 17 / 05) The conference adopted an indeterminate estimate for both licenses and tax collections.

	FY 2006-07 Annualized	FY 2006-07 Cash	FY 2007-08 Cash
General Revenue	Indeterminate	Indeterminate	Indeterminate
State Trust	Indeterminate	Indeterminate	Indeterminate
Total State Impact	Indeterminate	Indeterminate	Indeterminate
Total Local Impact			
Total Impact	Indeterminate	Indeterminate	Indeterminate