

REVENUE ESTIMATING CONFERENCE

TAX: Alcoholic Beverage Excise Tax on Wine

ISSUE: DIRECT WINE SHIPMENTS

BILL NUMBER(S): CS/HB 247

SPONSOR(S): Bogdanoff

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 and in-state wineries could be licensed by the State of Florida to ship wine directly to individuals within Florida. There are various criteria associated with the licensing of the winery shipper.

The winery 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 this or another state and of their Federal permit.
- Pay a registration fee of \$250.
- Provide a surety bond in the amount of \$5,000
- Renew annually by paying a renewal fee of \$250 and providing a true copy of this or another state's current alcoholic beverage license.
- Ship no more than 42 gallons of wine per calendar year to the same registered person.
- The outside shipping label must be conspicuous and include three components: This package contains alcohol; An adult signature is required; and The recipient must be at least 21 years of age.
- Obtain signature of the recipient prior to delivery and after presentation of a valid identification.
- Report monthly to the division the amount of wine shipped into the state during the preceding month.
- Pay monthly 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.
- Consent to the jurisdiction of any applicable Florida agency or court concerning enforcement of this law.

In addition to penalties provided in section 561.545, F.S., the division may suspend or revoke a winery shipper's license or impose fines for any violation of this section. Any winery shipper or anyone transporting wine from a winery shipper location directly to

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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 a winery shipper in violation of this section commits a misdemeanor of the second degree.

Prohibitions of direct shipments in sections 561.54 and 561.545, F.S., will not apply to direct 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: ½ of 1% of the consuming public, or approximately 60,000 individuals
- Fees: \$250
- Excise Taxes: \$2.25 per gallon
- Purchase limits: 42 gallons annually.

SECTION 3: METHODOLOGY (INCLUDE ASSUMPTIONS AND ATTACH DETAILS)

The bill requires that the direct shipper be a Primary American Source registrant (PAS) of supply. The division currently has approximately 1,098 PAS registrants in place. It can be estimated that each of these will wish to ship directly to Florida consumers. These estimated 1,098 shippers would each pay \$250, totaling \$274,500 in each year.

To determine the number of recipient consumers who might receive the wine shipments, given current population figures, if only 1 half of 1% of the consuming age population wish to purchase wine via direct shipments, there could be 60,000 recipients.

Given the estimated 60,000 recipients who could purchase wine directly, if each purchased 42 gallons of wine annually at the excise tax rate of \$2.25 per gallon, the excise tax collections could be as much as \$5,670,000 the first year. With a possible 2% increase each year, the excise tax collections could be as much as \$5,783,400 and \$5,899,068 in the following 2 years.

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) | \$ 5,670,000 | \$ 5,670,000 | \$ 5,783,400 |
| License Fees (AB&T TF) | 274,500 | 274,500 | 274,500 |
| Total Funds | 5,944,500 | 5,944,500 | 6,057,900 |
| Low | N/A | N/A | N/A |

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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 |