

REVENUE ESTIMATING CONFERENCE

TAX: Alcoholic Beverage Excise Tax on Wine

ISSUE: Direct Wine Shipments

BILL NUMBER(S): SB 126

SPONSOR(S): Senator Burt Saunders

MONTH/YEAR COLLECTION IMPACT BEGINS: Upon becoming law.

DATE OF ANALYSIS: March 22, 2007

SECTION 1: NARRATIVE

a. Current Law:

Due to the court rulings in *Granholm v. Heald*, 125 S.Ct. 1885, and *Bainbridge v. Florida*, US Middle District Court, Middle District of Florida, Tampa Division, Case number 8:99-CV-268-T-27TBN, August 5, 2005, Florida was enjoined from enforcing current prohibitions against direct shipment of wine because the courts found the laws unconstitutional in that they discriminate against out-of-state wineries.

With the exception of direct wine shipments, Florida Statutes currently prohibit any direct shipments of alcoholic beverages to any consumer or to any person (retailer) in the business of selling alcoholic beverages to residents of this state in Florida. Current law 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.

Certified Florida Farm Wineries are permitted to obtain licensure as a manufacturer, a distributor, and retailer.

b. Proposed Change:

Section 561.585, F.S., authorizes 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 malt and spirituous beverages to Florida consumers a violation of law. The bill provides for out-of-state and in-state entities to be licensed by the State of Florida to ship directly to persons in Florida who are at least 21 years of age for personal use only, up to a maximum of 18 cases of wine per person per calendar year.

There are various criteria associated with the licensing of the winery shipper. The winery shipper must:

- Qualify for licensure under sections 561.15 and 561.17, F.S., or provide certification from the federal government or the state in which the winery is located that the qualifications for that winery license include a minimum of the following components:
 - a. Fingerprinting;
 - b. Disqualification of applicant under 21; and
 - c. Disqualification of persons convicted of a felony within the last 15 years, of the beverage law of this state, the United States, or any other state in the past 5 years, or a criminal violation of the controlled substance act of this state, the United States, or any other state;
- Obtain and maintain a current license as a Primary American Source of Supply (PAS), as provided in section 564.045, Florida Statutes;
- Provide a true copy of a current wine manufacturer's license issued by this state or another state and a true copy of its current Federal Basic Permit as a wine producer;
- Manufacture no more than 250,000 gallons of wine per year;
- Pay an annual license fee of \$250;
- File a surety bond in the amount of \$5,000;
- May not be owned by a winery that manufactures more than 250,000 gallons of wine annually;
- Ensure the outside shipping label is conspicuous and includes three components: 1) This package contains alcohol; 2) An adult signature is required; and 3) The recipient must be at least 21 years of age;
- Report monthly to the division whether any wine product was shipped during the preceding month; the total amount of wine shipped for the preceding month; the quantity and types of wine shipped; and the amount of excise tax paid to the division (The report is not required from a winery shipper licensee who files a monthly report pursuant to section 561.55, Florida Statutes, that contains all of the information required by

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this bill);

- Remit monthly all sales taxes and excise taxes due on sales to persons in this state for the preceding month to the Department of Revenue and the Division of Alcoholic Beverages and Tobacco, respectively (The amount of tax is calculated as if the sale occurred at the place of delivery);
- Maintain records of all shipments to include the names, addresses, amounts, and dates for at least three years after date of delivery, and must allow the Department of Revenue and the Division of Alcoholic Beverages and Tobacco to perform an audit of the records upon request; and
- Consent to the jurisdiction of any applicable Florida agency or court concerning enforcement of this law.

The bill requires each winery shipper licensee and common carrier to obtain signature of the recipient prior to delivery and after presentation of a valid identification. A complete defense to any civil action, except for any administration action by the division is provided if the person purchasing the alcoholic beverage falsely evidenced that they were of legal age to purchase or consume the alcohol, an acceptable form of identification was carefully checked, and the person appeared to be of an age where an ordinarily prudent person would believe them to be of legal age.

In addition to penalties provided in section 561.545, F.S., SB 126 authorizes the division to suspend or revoke a direct shipper's license or impose fines for any violation of this section. Any direct shipper or anyone transporting wine from a direct shipper 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 a direct shipper in violation of this section commits a misdemeanor of the second degree.

The bill specifies that internet orders received at a vendor's licensed place of business will be construed as a telephone order and a sale actually made at the vendor's licensed place of business.

SB 126 amends section 599.004, F.S., to reduce the current requirement that 90% of wine produced must be made from Florida agricultural products in order to qualify for the certification as a Florida Farm Winery down to 60% and retains the Department of Agriculture and Consumer Services' authority to waive this requirement for hardship reasons. In addition, it limits wineries being licensed as distributors to those in existence on July 1, 2007.

SECTION 2: DESCRIPTION OF DATA AND SOURCES

1. Current Florida PAS Licenses – 1,098;
2. Federally Licensed Manufacturers – 4,854;
3. Population Estimates; 11,736,378
4. Fees @ \$250;
5. Taxes @ \$2.25 per gallon; and
6. Purchase limits – 18 cases per recipient.

SECTION 3: METHODOLOGY (INCLUDE ASSUMPTIONS AND ATTACH DETAILS)

It is uncertain how many of the current federally licensed manufacturers will want to become licensed to ship wine into Florida. It is also uncertain how many consumers in Florida will wish to purchase wine via direct shipments. To estimate these numbers the following methodologies were used.

It is estimated that there will be 1,800 entities who will meet licensure requirements and who will seek licensure to sell wine directly into Florida. The number of individuals who will purchase wine directly from the licensed direct shippers is unknown. Assuming that approximately ½ of 1% of the consuming population will purchase directly, there could be 60,000 individual recipients. The bill limits the amount of wine that can be purchased by the individuals from the licensed winery shippers to 18 cases per year. For analysis purposes, it is assumed that the individuals will purchase the maximum 18 cases of wine per year. With one case of wine equaling 2.38 gallons and at the excise tax rate of \$2.25 per gallon, the estimated excise tax would be \$5,783,400 for the first full fiscal year.

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SECTION 4: PROPOSED FISCAL IMPACT

State Impact—All Funds	FY 2007-08 Annualized	FY 2007-08 Cash	FY 2008-09 Cash
High	N/A	N/A	N/A
Middle			
Excise Tax (GR)	5,783,400	5,783,400	5,956,902
License Fees (AB&T TF)	450,000	450,000	463,500
Total Funds	6,233,400	6,233,400	6,420,402
Low	N/A	N/A	N/A

State Impact—All Funds	FY 2009-10 Cash	FY 2010-11 Cash
High	N/A	N/A
Middle		
Excise Tax (GR)	6,135,609	6,319,677
License Fees (AB&T TF)	477,405	491,727
Total Funds	6,613,014	6,811,404
Low	N/A	N/A

SECTION 5: CONSENSUS ESTIMATE (ADOPTED 3 / 24 / 07) The conference adopted an indeterminate estimate.

	FY 2007-08 Annualized	FY 2007-08 Cash	FY 2008-09 Cash
General Revenue	Indeterminate	Indeterminate	Indeterminate
AB&T TF	Indeterminate	Indeterminate	Indeterminate
Total State Impact	Indeterminate	Indeterminate	Indeterminate
Total Local Impact			
Total Impact	Indeterminate	Indeterminate	Indeterminate

	FY 2009-10 Cash	FY 2010-11 Cash
General Revenue	Indeterminate	Indeterminate
AB&T TF	Indeterminate	Indeterminate
Total State Impact	Indeterminate	Indeterminate
Total Local Impact		
Total Impact	Indeterminate	Indeterminate