

REVENUE ESTIMATING CONFERENCE

TAX: ALCOHOLIC BEVERAGE TAX ON WINE

ISSUE: DIRECT WINE SHIPMENTS

BILL NUMBER(S): SB 1096

SPONSOR(S): Senator Margolis

MONTH/YEAR COLLECTION IMPACT BEGINS: July 1, 2008

DATE OF ANALYSIS: January 30, 2008

SECTION 1: NARRATIVE

a. Current Law:

Due to the court rulings in Granholt 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 above caveat, Florida Statutes currently prohibit any shipments of alcoholic beverages going directly to any consumer in Florida.

- 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., 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.
- Section 561.545, F.S., provides penalties for direct shipment of alcoholic beverages to residents of this state.

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

b. Proposed Change:

SB 1096 creates Section 561.222, F.S., to authorize 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 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 4 cases of 9 liters of wine per calendar year to any household address.

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

- Manufacture no more than 250,000 gallons of wine per year;
- File an application for licensure and provide information that is identical to the information required for licensure as a wine manufacturer in this state;
- Provide a copy of a current wine manufacturer's license issued by the state in which it is domiciled and a copy of its current Federal Basic Permit as a wine producer;
- Provide evidence that it qualifies for licensure in s. 561.15, F.S.;
- Consent to the jurisdiction of any applicable Florida agency or court concerning enforcement of this law;
- Appoint a registered agent in this state for acceptance of service of process;
- Obtain and maintain a current license as a Primary American Source of Supply (PAS), as provided in s. 564.045, F.S., and register all brands shipped;
- File a surety bond in the amount of \$5,000;
- Register with the Department of Revenue as a collector and remitter of state sales tax; and
- Pay an annual license fee of \$250.

The division may not issue or renew a license if:

- The entity has violated provisions of this section;

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- The entity produces more than 250,000 gallons of wine annually or has a subsidiary or affiliate winery whose individual production totals are greater than 250,000 gallons of wine annually; and
- The winery has appointed a distributor in this state, unless the division is provided a copy of written notice to the distributor of its application as a winery shipper at least 1 year in advance of applying for the license.

The winery shipper must:

- Verify the purchaser's age at the point of purchase before completing any transaction and refuse sales to anyone younger than 21;
- Ensure the outside shipping label is conspicuous and includes four components: 1) This package contains alcohol; 2) The recipient must be at least 21 years of age; 3) The wine is for personal use only and not for resale; and 4) The signature of the recipient is required;
- Ship no more than 4 cases of 9 liters each of wine per calendar year to any household address;
- Require each common carrier to obtain signature of the recipient prior to delivery and after presentation of a valid identification;
- Obtain from each common carrier, before delivering wine, a written policy to the winery shipper that the common carrier will obtain the required information;
- Offer the brands of wine shipped to licensed distributors in the same quantities per calendar year as are direct shipped;
- 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 in this state);
- Maintain records of all shipments to include the names, addresses, amounts, and date of birth of the purchaser, and quantity and brands of wine shipped 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. Maintain records of any contracts with common carriers and the carrier's written wine delivery policy; and
- 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 brands of wine shipped; and the amount of excise tax paid to the division the previous month.

Common Carriers making deliveries shall:

- Register with the division and acknowledge their intent to deliver wines and acknowledge the requirements for delivery of same;
- Maintain a written wine-delivery policy stating that the common carrier will, before delivering any wine, obtain the signature of the recipient after a valid identification is presented verifying that the recipient is 21 years of age or older;
- Refuse to deliver a shipment if the recipient appears to be under 21 or does not present valid identification; and
- Obtain the recipient's address, signature, and acknowledgement of personal consumption of the wines received and maintain those records for a period of 3 years and make them available upon request of the division.

In addition to penalties provided in section 561.545, F.S., SB 1096 authorizes the division to suspend or revoke a direct shipper's license, issue cease and desist orders, and impose fines up to \$50,000 for any violation of a cease and desist order. Any direct shipper or anyone transporting wine from a direct shipper, knowingly or intentionally, directly to any person in this state who is under 21 years of age commits a felony of the third degree

SB 1096 amends s. 561.24, F.S., to prohibit the issuance of a winery shipper license to a manufacturer who is licensed as a distributor or vendor in any state.

SB 1096 amends s. 561.54, F.S., to allow a winery shipper to ship wine or a licensed Florida vendor to ship alcoholic beverages to persons 21 years of age or older.

SB 1096 amends s. 561.545, F.S., to permit the direct shipment of wine only to residents of this state.

SB 1096 amends section 599.004, Florida Statutes, 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 authorizes

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the Commissioner of Agriculture to waive this requirement for hardship reasons.

SECTION 2: DESCRIPTION OF DATA AND SOURCES

1. Current Florida PAS Licenses – 1,328;
2. Federally Licensed Manufacturers – 5,438;
3. Estimated Recipients - 60,000
4. Fees @ \$250;
5. TAXES @ \$2.25 PER GALLON; AND
6. PURCHASE LIMITS – 4 CASES PER RECIPIENT

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.

We are projecting that 2,095 of the current 5,438 federally licensed manufacturers will wish to ship directly into Florida.

It is estimated that there will be 2,095 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 4 cases per year. For analysis purposes, it is assumed that the individuals will purchase a high of 4 cases or a low of 2 cases of wine per year.

SECTION 3: METHODOLOGY (INCLUDE ASSUMPTIONS AND ATTACH DETAILS)

Sales Tax Assumptions:

9 bottles per case (average of 6-12/case)

\$15 per bottle

4 Cases/consumer

60,000 consumers annually

Grown 3%

$9 \times \$15 \times 4 = \$540 \text{ purchase} \times 60,000 \text{ purchases} = \$32,400,000 \times .06 = \1.94 m a year

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SECTION 4: PROPOSED FISCAL IMPACT

State Impact—All Funds	FY 2008-09 Annualized	FY 2008-09 Cash	FY 2009-10 Cash
High 4 Cases			
Excise Tax (GR)	1,285,200	1,285,200	1,323,756
License Fees (AB&T TF)	523,750	523,750	539,463
Sales Tax	1,780,000	1,940,000	2,000,000
Middle			
NA	NA	NA	NA
Low 2 Cases			
Excise Tax (GR)	642,600	642,600	661,878
License Fees (AB&T TF)	523,750	523,750	539,463

State Impact—All Funds	FY 2010-11 Cash	FY 2011-12 Cash
High 4 cases		
Excise Tax (GR)	1,363,469	1,404,373
License Fees (AB&T TF)	555,646	572,316
Sales Tax	2,060,000	2,120,000
Middle		
NA	NA	NA
Low		
Excise Tax (GR)	681,734	702,186
License Fees (AB&T TF)	555,646	572,316

SECTION 5: CONSENSUS ESTIMATE (ADOPTED 2 / 8 / 08) The conference adopted the 4 case estimate.

	FY 2008-09 Annualized	FY 2008-09 Cash	FY 2009-10 Cash
General Revenue—Sales	1.7	1.6	1.8
General Revenue—Beverage	1.3	1.3	1.3
General Revenue—Svc Chg	Insignificant	Insignificant	Insignificant
State Trust—AB&T TF	.5	.5	.5
Total State Impact	3.5	3.4	3.6
Revenue Sharing	.1	.1	.1
Local Gov't Half Cent	.2	.2	.2
Local Option	.2	.2	.2
Total Local Impact	.5	.5	.5
Total Impact	4.0	3.9	4.1

	FY 2010-11 Cash	FY 2011-12 Cash
General Revenue—Sales	1.9	1.9
General Revenue--Beverage	1.4	1.4
General Revenue—Svc Chg	Insignificant	Insignificant
State Trust—AB&T TF	.6	.6
Total State Impact	3.9	3.9
Revenue Sharing	.1	.1
Local Gov't Half Cent	.2	.2
Local Option	.2	.2
Total Local Impact	.5	.5
Total Impact	4.4	4.4