

BRIEFINGS



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Ill-Conceived, Burdensome Alcoholic Beverage Surcharge Tax Deserves Final Repeal This Session

The 2006 Florida Legislature has a chance to finish a job they started seven years ago when they began to phase-out the alcoholic beverage surcharge tax, or the “by the drink tax.” This ill-conceived, burdensome, costly and difficult to administer tax deserves final repeal this session.

The alcoholic beverage surcharge was enacted in 1990 with little public review or debate (in large part to help fund \$112 million in budget “turkeys”). It is a duplicative tax on the retail sales of alcoholic beverages sold for consumption on the premises of the vendor. The original tax rate was 10 cents per one ounce of liquor or four ounces of wine and four cents per 12 ounces of beer. In 1997, cider was added to the tax at a rate of six cents per 12 ounces. Reductions in the tax were enacted in 1999 and 2000, and the current rates are 3.34 cents per one ounce of liquor or four ounces of wine, 1.34 cents per 12 ounces of beer and two cents per 12 ounces of cider.

The tax is expected to produce \$49.3 million in the current year. This is in addition to excise taxes levied on alcoholic beverages at the wholesale level, which generates \$596.2 million annually and is a very reliable and cost-effective tax with high compliance. Most of the surcharge is deposited in the state’s General Revenue Fund, but 27.2% (\$12.5 million this year) goes to programs to reduce substance abuse in children and adolescents.

Little Thought Went Into Enactment of the Surcharge

The tax was hurriedly enacted very late in the 1990 session to balance the budget. The surcharge was chosen because it was estimated that it would raise the amount of money the Legislature was looking for at the time (and perhaps because there was no organized opposition to it). There was no real effort to find a revenue source that made sense and the impacts of this new tax were not adequately examined or considered. Former Senator Curt Kiser recalls how the idea was offered as an amendment “out of the blue” during a conference committee meeting despite not ever being considered or discussed before and despite the fact that it was a fundamental change in the way the state levied and collected alcoholic beverage taxes.

It did not take long for people to realize that the tax was a mistake. Alcoholic beverage retailers soon voiced their opinions on the new tax, calling it unfair, very costly and extremely burdensome. It was called double taxation, since alcoholic beverages are taxed at the wholesale level, only then to be taxed again at retail. Florida TaxWatch and other groups began recommending that the Legislature repeal the tax.

“Improving taxpayer value, citizen understanding and government accountability.”

The opposition to repeal has been based mostly on the loss of revenue, not the merits of this particular tax. The 1997 Legislature acknowledged the need to repeal the tax but tied it to a measure that prevented shipping of alcoholic beverages into Florida directly to customers. Thinking that this would increase beverage tax collections by eliminating unlawful direct shipments, the repeal was contingent upon this change bringing in enough money to make up for the repeal. It did not, so the contingent repeal was not implemented.

The Legislature has since reduced the tax by two-thirds. The 1999 Legislature reduced the tax by one-third, with many expecting a three-year phase-out of this tax. The phase-out continued in 2000 when the tax rates were reduced to their current level. In 2001, the House passed a bill to repeal the alcoholic beverage surcharge but it was not taken up by the Senate. The House also passed a repeal bill in 2005 and again, the Senate did not take it up.

The 2006 Legislature is trying again. Bills have been filed in both chambers to repeal the tax—House Bill 7105 and Senate Bill 1292. The Governor is also recommending repeal, including it in his FY 2006-07 Budget Recommendations. The Governor calls the tax onerous and burdensome and notes that it hurts small business. Both the Governor and the House proposals specifically allow continued funding for children substance abuse programs.

Surcharge Is Burdensome and Costly to State Government, Taxpayers and Businesses

In a 2004 Justification Review of the Division of Alcoholic Beverages and Tobacco, the Office of Program Policy Analysis and Government Accountability (OPPAGA) recommended that the surcharge be eliminated or modified. OPPAGA concluded that the surcharge is a costly and complicated tax to administer, audit, and enforce and is burdensome to both the division and merchants.

The OPPAGA report found that while the beverage excise tax is levied on 400 wholesale-level companies, the surcharge is imposed on over 20,000 retailers. This results in a disproportionate share of the Division's resources being committed to collect, audit and enforce this tax. In addition to the large number of taxpayers, the high rate of inaccurate returns means a higher rate of audits by the Division. An earlier OPPAGA report stated that confusion over how to calculate the tax due resulted in 97% of all audits finding errors, both overpayment and underpayment by retailers. Moreover, two different methods used to calculate the tax further complicated reporting and auditing. **The OPPAGA report showed that only 3% of tax returns that were audited were done so correctly, according to law. This is prima facia evidence of why this tax deserves repeal.**

The Division reported that 35% of its Bureau of Auditing workload is devoted to the beverage surcharge, amounting to \$2.5 million and 37 employees. Total surcharge collections at that time were \$45 million.

Administering the surcharge also requires resources of the Department of Revenue to process the tax payments. Since the average monthly remittance is relatively small (less than \$200), it is not practical to use the more efficient electronic funds transfer for these payments.

OPPAGA also found that the surcharge record keeping and reporting requirements place a significant and undue burden on retailers. Retailers must document the type and volume of

alcohol consumed on their premises. This can be a difficult task for the many small, locally owned bars or restaurants that have limited resources for keeping records. Package stores that also sell alcoholic beverages for onsite consumption must maintain separate sales records for package sales and sales subject to the surcharge.

The hospitality industry claims it costs its businesses more to collect and remit the tax, and participate in audits, than the tax generates in revenue. Preliminary returns from a survey currently underway by the Florida Restaurant and Lodging Association show that its members spend 7-8 hours per month complying with the surcharge, and pay an average hourly wage of \$22.75 per hour to personnel for this. In addition, respondents indicate an audit requires 12-15 hours of the businesses' time.

While some large retailers may have the processes in place to effectively manage this tax, most of the more than 21,000 retailers subject to the surcharge are small businesses with limited resources for this type of administration.

Even With Repeal of the Surcharge, Alcoholic Beverages Are Taxed Very Heavily in Florida

Even without the “by the drink” surcharge, Florida has very high excise taxes on alcoholic beverages. In terms of total dollars, Florida collects more alcoholic beverage taxes than any other state and ranks 3rd in per capita collections behind Alaska and South Carolina. In FY 2005, Florida collected 13.4% of all the state alcoholic beverage taxes in the nation. If the surcharge were repealed, Florida would still collect far more in alcoholic beverage taxes than any other state, with the exception of Texas. The wholesale excise tax alone provided \$576 million for Florida in FY 2005. Even without the surcharge, this would be the second highest total beverage tax collection in the nation, behind Texas, which collected \$608 million. The next highest state California, collected \$312 million.

Alcoholic beverages are also subject to the state and local general sales and use taxes, which are not included in the above figures.

Time Is Right for Long Overdue Repeal

The problems with the alcoholic beverage surcharge are widely known and accepted. Opposition to final repeal has largely been based around the argument that the state did not have the revenue to further cut taxes. This year, the state does have the money. Legislators have the luxury of an unprecedented surplus with which to build the next state budget and there has been much talk of significant tax cuts.

Legislators would have a hard time finding a better candidate for repeal or a less cost-effective tax. Repealing the surcharge would finally correct a mistake made 16 years ago.

This Briefings was written by Kurt R. Wenner, Senior Research Analyst, under the direction of Dominic M. Calabro, President & CEO.

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