F I S C A L   I M P A C T   R E P O R T

SPONSOR Taylor

ORIGINAL DATE 3/08/07
LAST UPDATED 3/9/07

HB

SHORT TITLE Small Wine Maker Gross Receipt

SB 1131

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	(442.0)	(450.0)	Recurring	General Fund
	(233.0)	(238.0)	Recurring	DWI Grant Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 1131 makes the following changes to the Liquor Excise Tax Act:

- redefines “wine” as an alcoholic beverage other than cider made by fermenting fruit or other agricultural products that does not contain more than 20 percent alcohol by volume;
- redefines “person” to include institutions;
- defines “winegrower” as a person who has received a winegrowers business license from the state;
- changes the threshold to be taxed as a small winegrower to 950 thousand liters;
- allows winegrowers to transfer wine to each other for the purpose of processing, bottling or storage without the transfer volume being taxed provided the wine is returned to the original owner;

The effective date for the changes is July 1, 2007.

FISCAL IMPLICATIONS

The fiscal impact shown here has been revised to more accurately account for out-of-state wineries that will be able to take advantage of the lower excise tax.

TRD reports that the increase in production level to be included at the small winer rate will lower liquor excise revenues by $675,000. 65.43 percent of this is a reduction in general fund revenue and the balance is a reduction in the local DWI grant fund.

SIGNIFICANT ISSUES

TRD reports that the increase in the production level will allow the two largest wine producers in New Mexico to qualify as "small winers." They have also expressed concern that the fiscal impacts may be understated because wholesalers can pay the lower tax on wine they pay on wine they buy from small wineries, regardless of where the winery is. This higher level of production increases the number of wineries nationwide that qualify for wholesale purposes.

The federal government provides a credit for small producers. The threshold for receiving the federal credit is 250,000 gallons or 950,000 liters. This would match the definition proposed here but the federal credit is only on the first 375,000 liters for these producers. [Section 5041(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 5041(c)(1))]

TECHNICAL ISSUES

TRD:

House Bill 1145 makes several clarifications that will improve administration of the Liquor Excise Tax as it applies to small wineries. In particular, adding the definition of "winegrower" and clarifying the treatment of wine transferred from a small winery to a wholesaler for distribution are useful clarifications. Several provisions of the bill raise concerns however.

Page 3 & 4 section G. Intent of the proposed changes to the definition of "Person" is unclear. As amended, the definition states that it "includes" various governmental entities, but it doesn't state whether it applies to any non-governmental entities. On its face, it would appear that no private wholesaler would match the definition. Since this definition is used in the Liquor Excise Tax to define terms like "wholesaler," which in turn define who is subject to tax, the implication would be that no private wholesaler is subject to the tax. Effectively the whole tax base would be eliminated. If this is not the intent of the legislation, the definition of person should be clarified to indicate that it continues to include various types of private business entities.

Page 7 paragraph B. The proposed new deduction – for wine received from another New Mexico winegrower for processing, bottling or storage and subsequent return to the transferor – would be more correctly treated as an exemption than a deduction for the tax. The receiver is performing a service, not producing wine and this service should not count toward the service provider's wine production numbers. The exemption might be better placed in a new section 7-17.9.1

NF/csd