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FISCAL IMPACT REPORT

SPONSOR	Beffort	ORIGINAL DATE	1/30/08	HB	
		LAST UPDATED			
SHORT TITLE	Winery Definitions & Taxation	SB			43
		ANALYST			Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	(124.0)	(129.0)	Recurring	General Fund
	(86.0)	(89.0)	Recurring	Local DWI Grant Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 43 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;

Under current law, the first 80,000 liters produced at a small winery are taxed at \$0.10 per liter and then the rate is \$0.20 per liter for wineries who produce less than 560,000 liters per year. SB43 would not change the 80,000 threshold but would increase the 560,000 to 950,000 that would be taxed at the 0.20 rate. The rate for wineries that produce more than 560,000 are subject to a \$0.45 per liter excise tax on all liters.

The effective date for the changes is July 1, 2008.

FISCAL IMPLICATIONS

TRD reports that in FY2007 about \$77 thousand was collected from small wine growers that produced fewer than 80,000 liters a year, so qualified for the reduced rate of \$.10 per liter on their entire sales in New Mexico, and \$67 thousand was collected from small wine growers that produced between 80,000 liters and 560,000 liters per year, so qualified for the reduced rate of \$.10 per liter on their first 80,000 liters of sales in New Mexico and the reduced rate of \$0.20 per liter on their remaining sales in New Mexico. Larger wine growers are subject to the regular excise of \$0.45 per liter. Receipts from the liquor excise tax are distributed to the Local DWI Grant Fund (41.5%), with the remainder distributed to the General Fund.

Few New Mexico wine growers produce more than 80,000 liters per year, and even fewer more than 560,000 liters per year (the current limit to qualify as a “small wine grower”).

SIGNIFICANT ISSUES

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:

Under current as well as proposed law, the liquor excise tax is imposed on sales by a wholesaler of liquor on which liquor excise tax has not been paid. A “wholesaler” is defined as a person holding a wholesalers license under section 60-6A-1 or a person selling alcoholic beverages that were not purchased from a licensed wholesaler. Thus, a winegrower is ordinarily a “wholesaler” when they sell their own production, and must pay liquor excise tax on their sales. New Subsection B of Section 7-17-6, which begins on page 7, line 7 of the bill, creates a new deduction for wine “transferred” to a winegrower by another winegrower for “processing, bottling or storage and subsequent return to the transferor”. If a “transfer” is a sale, this deduction is necessary to delay the imposition of the liquor excise tax until the transferor winegrower sells the wine after it is returned. If a transfer isn’t a sale, the language isn’t necessary. New Subsection B of Section 7-17-5, which begins on page 6, line 7, appears unnecessary, either because a transfer can be deducted under the new deduction, or the transfer is not a sale. The apparent objective of new Subsection C of Section 7-17-5, which begins on page 6, line 17, is to delay the imposition of the liquor excise tax on sales from a winegrower to a wholesaler until the wholesaler sells the wine. However, the method of achieving the delay is by transferring the liquor excise tax liability from the winegrower to the wholesaler. A more direct method of achieving this result would be to create a new deduction for sales by winegrowers to wholesalers.

Current law has a “cliff” at the maximum for the reduced rate. A small winery that produces only one liter above the threshold is penalized with a more than 100% increase in excise tax liability. This “cliff” is retained in the bill.

ALTERNATIVES

TRD reports that over half of the tax benefit from the reduced excise tax rate for “small winegrowers” goes to out-of-state wine growers. All of the benefit could be directed to New Mexico winegrowers by restructuring the benefit as a credit for in-state production.

NF/jp