



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

Date Amended:	<b>Enrolled</b>	Bill No:	<b>SB 118</b>
Tax:	<b>Alcoholic Beverage</b>	Author:	<b>Chesbro, et al</b>
Related Bills:			

*This analysis will only address the bill's provisions that impact the Board.*

**BILL SUMMARY**

This bill would create a wine direct shipper permit that authorizes the permit holder to sell and ship wine directly to any person in California that is twenty-one years of age or older for his or her personal use. The issuance of a wine direct shipper permit by the Department of Alcoholic Beverage Control (ABC) would constitute the registration of the person to whom the permit is issued as a taxpayer with the Board of Equalization (Board) under the Alcoholic Beverage Tax Law.

**ANALYSIS**

**Current Law**

**ALCOHOLIC BEVERAGE TAX LAW**

Under existing law, Section 32101 of the Revenue and Taxation Code provides that licenses issued to any manufacturer, winegrower, wine blender, distilled spirits manufacturer agent, rectifier, wholesaler, importer, or customs broker under the Alcoholic Beverage Control Act<sup>1</sup> constitutes the registration of the person to whom the license is issued as a taxpayer under the Alcoholic Beverage Tax Law. Upon the issuance of any such license, ABC is required to furnish a copy of the license to the Board.

Among other things, Sections 32151 and 32220 of the Revenue and Taxation Code impose a per-gallon excise tax upon all beer and wine sold in this state by a manufacturer, wine grower, or importer, and others selling such beverages with respect to which no tax has been paid.

The current taxes and surcharges on wine are as follows:

	<u>Tax Per Gallon</u>	<u>Surcharge Per Gallon</u>	<u>Total Per Gallon</u>
Wine (not more than 14 percent alcohol)	\$0.01	\$0.19	\$0.20
Wine (more than 14 percent alcohol)	\$0.02	\$0.18	\$0.20
Sparkling wine	\$0.30	None	\$0.30

<sup>1</sup> Division 9 (commencing with Section 23000) of the Business and Professions Code

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

The alcoholic beverage tax is paid to the Board and deposited into the Alcohol Beverage Control Fund.

### **SALES AND USE TAX LAW**

Current law imposes a sales or use tax on the sale or purchase of tangible personal property in this state (including alcoholic beverages). When a person sells wine at retail in this state, the sales tax applies. The seller is responsible for this tax and must pay it to the state. When the sales tax does not apply, the use tax does. For example, when a person buys wine from a point outside this state for use or consumption in this state, the use tax is the applicable tax. If the out-of-state seller has nexus within the state, the seller is required to collect the use tax from the purchaser at the time of sale. If the seller does not collect the use tax, or if the seller does not have nexus in this state, the purchaser is required to pay the use tax directly to the Board.

Under existing law, every person desiring to engage in or conduct business as a seller within this state is required to apply for a seller's permit for each place of business. Also, every out-of-state retailer selling tangible personal property for use in this state is required to register with the Board and, among other things, give the name and address of all agents operating in this state.

The Board's Regulation 1684, *Collection of Use Tax by Retailers*, provides, in part, that a retailer not engaged in business in this state may apply for a Certificate of Registration – Use Tax. Holders of such certificates are required to collect tax from purchasers and pay the tax to the Board in the same manner as retailers engaged in business in this state.

### **ALCOHOLIC BEVERAGE CONTROL ACT**

Under existing law, Section 23661.2 of the Business and Professions Code allows any unlicensed adult resident of California to apply to ABC and be issued a permit to receive a shipment of wine, including vermouth and champagne, from a state other than California. The shipment of wine may be from any state of the United States that allows adult residents of that state to receive by permit of nominal cost shipments of no less than nine liters of wine, including vermouth and champagne, per month from California. The shipment into this state must be made in accordance with rules adopted by ABC, and the total shipments permitted in any calendar month to a person can not exceed nine liters. A common carrier to which the permit is presented is authorized to make delivery of the shipment to the person named in the permit. Delivery of a shipment pursuant to the permit is not deemed to constitute a sale in this state.

An individual or licensee in a state that affords California licensees or individuals an equal reciprocal shipping privilege may ship, for personal use and not for resale, no more than two cases of wine (no more than nine liters each case) per month to any adult resident in this state. Such a delivery of a wine shipment does not constitute a sale in this state. The shipping container of any wine sent into or out of this state must be clearly labeled to indicate that the package cannot be delivered to a minor or to an intoxicated person.

### Proposed Law

This bill would amend Section 23661.2 of the Business and Professions Code to remove the provision that allows any adult resident of California to apply to ABC and be issued a permit to receive a shipment of wine, including vermouth and champagne.

This bill would also add Section 23661.3 to the Business and Professions Code to allow any person, who is currently licensed in this state or any other state as a winegrower and who obtains a wine direct shipper permit, to sell and ship wine directly to a resident of California. Such person would be allowed to ship wine directly to a resident of California, who is at least 21 years of age, for the resident's personal use and not for resale. Before sending any shipment to a resident of California, the wine direct shipper permit holder would be required to:

- File an application with ABC.
- Pay a ten dollar (\$10) annual registration fee if the winegrower is not currently licensed by ABC.
- Provide ABC its California alcoholic beverage license number or a true copy of its current alcoholic beverage license issued by another state.
- Obtain from ABC a wine direct shipper permit.
- Obtain a seller's permit or register with the Board pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

A wine direct shipper permit would authorize the permit holder to do all of the following:

- Sell and ship wine to any person 21 years of age or older for his or her personal use and not for resale.
- Ship wine directly to a resident in this state only in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."
- Ship wine only if the permit holder requires the carrier to obtain the signature of any individual 21 years of age or older before delivering any wine shipped to an individual in this state.
- If the permit holder is located outside of this state, report to ABC no later than January 31 of each year, the total amount of wine shipped into the state during the preceding calendar year under the wine direct shipper permit.
- If the permit holder is located outside of this state, pay to the Board all sales and use taxes and excise taxes on sales to residents of California under the wine direct shipper permit. For excise tax purposes, all wine sold pursuant to a direct shipper permit would be deemed to be wine sold in this state for excise tax purposes.
- If located within this state, provide ABC any necessary additional information not currently provided to ensure compliance.
- Permit ABC or the Board to perform an audit of the wine direct shipper permit holder's records upon request.

---

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

- Be deemed to have consented to the jurisdiction of ABC or any other state agency and the California courts concerning enforcement of this section and related laws, rules, or regulations.

This bill would prohibit sales and shipments of wine directly to consumers in California from winegrowers who do not possess a current wine direct shipper permit from ABC. Any person who knowingly makes, participates in, transports, imports, or receives such a shipment would be guilty of a misdemeanor, as specified.

A wine direct shipper permit holder located outside of the state could annually renew its permit with ABC by paying a ten dollar (\$10) renewal registration fee and providing ABC with a true copy of its current alcoholic beverage license issued by another state. A wine direct shipper permit holder located within California would be required to renew its wine direct shipper permit in conjunction with its master license. A "master license" would mean a winegrower's license issued by the department.

This bill would also allow ABC and the Board to promulgate rules and regulations to effectuate the purpose of Section 23661.3.

And lastly, this bill would amend Section 32101 of the Revenue and Taxation Code to make issuance of any wine direct shipper permit under the Alcoholic Beverage Control Act a registration of that person to whom the permit is issued as a taxpayer under the Alcoholic Beverage Tax Law.

This bill would become effective January 1, 2006.

### **In General**

Upon the repeal of prohibition in 1933 and the return of the legal sale of alcoholic beverages to California, taxation and regulation of the manufacture, distribution, and sale of alcoholic beverages were given to the Board. In 1955, an amendment to the State Constitution became effective which removed the duty of regulating the manufacture and sale of alcoholic beverages from the Board and placed it in the new ABC. The Board is responsible for assessing and collecting the excise taxes that are or may be imposed by the Legislature on the manufacture, importation, and sale of alcoholic beverages in this state.

### **Background**

On May 16, 2005, the U. S. Supreme Court ruled on a challenge to state regulatory schemes in Michigan and New York brought by small wineries (*Granholm v. Heald*, 125 S.Ct. 1885 (2005)). The Court heard oral arguments on the question: *Does a state law that allows in-state wineries to directly ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant commerce clause in light of the 21st Amendment?* In general, the Commerce Clause prohibits states from adopting laws that benefit in-state economic interests to the detriment of out-of-state interests. In similar broad terms, § 2 of the 21<sup>st</sup> Amendment forbids transporting or importing liquor into a state in violation of its laws.

Both Michigan and New York have regulatory schemes that ban the direct shipment of out-of-state wine to in-state consumers. In Michigan, out-of-state wineries are only allowed to ship directly to wholesalers, while their in-state counterparts are allowed to ship directly to consumers. In addition, all parties wishing to access wholesalers must obtain a license from the state. The wholesale license costs \$300 for out-of-state wineries and \$50 for in-state wineries.

The New York regulatory scheme differs slightly. In New York, all wineries must be licensed to sell directly to consumers. To receive a license, a winery must pay certain regulatory fees, maintain an office within the state, and receive wine in a government-bonded winery, warehouse, or storeroom located within the state.

The Supreme Court held, in a 5 to 4 decision, that laws banning or severely restricting the ability of out-of-state shippers to ship wine directly to consumers while allowing in-state wineries to do so violate the Commerce Clause. The Court's opinion stressed that, if states choose to allow the direct shipment of wine to consumers, they must do so on even-handed terms.

The Court determined that laws of both states discriminated against out-of-state wineries in violation of the Commerce Clause. Having made the determination, it considered whether the laws were justified because there is no other way to achieve the states' goals of preventing deliveries to minors and ensuring that state taxes are collected. It found that the states could meet their goals by requiring an adult's signature as a condition of delivery and requiring the out-of-state winery to obtain a liquor permit.

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to implement statutory changes required with respect to the issue of "direct-to-consumer" shipments of wine based on the U.S. Supreme Court decision in *Granholm v. Heald*.
2. **Key amendments.** The **August 16, 2005**, amendments require that a wine direct shipper permit holder obtain a seller's permit for sales tax purposes or a Certificate of Registration – Use Tax and provide that all wine sold pursuant to a direct shipper permit is deemed to be wine sold in this state. These Board staff-suggested amendments are intended to be consistent with the author's intent of putting in-state and out-of-state direct shippers on even terms, by requiring out-of-state winegrowers to collect the use tax and imposing the excise tax. As previously noted, the excise tax on wine is imposed upon wine sold "in this state." However, wine purchased from an out-of-state direct shipper that is shipped from that out-of-state location to an in-state consumer is generally considered to be a sale "outside this state," since title transfers to the consumer outside the state when the property is given to the common carrier for delivery.

The **July 5, 2005**, amendments delete the limit of 24 nine-liter cases of wine that may be shipped annually to a California resident and make other technical changes. The **June 27, 2005**, amendments clarify that the prohibition of sales and shipments of wine direct to consumers in California applies only to winegrowers, and not to persons, who do not possessing a current wine direct shipper permit. The **June 16, 2005**, amendments simply revise the list of the measure's co-authors. The **June 14, 2005**, amendments allow specified persons to register with ABC as a wine direct shipper allowing such persons to sell and ship up to 24 nine-liter cases of wine

---

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

annually directly to a resident of California. The issuance of a wine direct shipper permit by ABC would constitute registration of that person with the Board under the Alcoholic Beverage Tax Law. The **March 31, 2005**, version of the bill did not impact the Board.

3. **The provisions of the bill would not be problematic to administer.** Creating a new direct wine shipper permit under the Alcoholic Beverage Tax Law would not be problematic for the Board.

### **COST ESTIMATE**

Administrative costs would be incurred in registering additional taxpayers, modifying computer programs, processing additional returns and payments, revising returns and publications, and answering inquires from the public. These costs are estimated to be \$30,000 for fiscal year 2005-06, \$30,000 for fiscal year 2006-07, \$85,000 for fiscal year 2007-08, and \$73,000 for fiscal year 2008-09, and each fiscal year thereafter.

### **REVENUE ESTIMATE**

The provisions of this bill could have a positive impact on the excise tax and use tax collected simply by providing both in-state and out-of-state wine sellers a method to register as a direct wine shipper, which would require such persons to collect and remit taxes due to the Board. However, the Board has no way of measuring the potential impact these provisions may have, and therefore, cannot provide an estimate at this time.

Analysis prepared by:	Cindy Wilson	916-445-6036	08/22/05
-----------------------	--------------	--------------	----------

Contact:	Margaret S. Shedd	916-322-2376	
----------	-------------------	--------------	--

mcc

0118-enr.doc

---

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*