

2014 Oregon Liquor Privatization Initiatives – Revenue Framework Fact Sheet

- **Imposes a wholesale sales tax on distilled spirits.** To make up for state's lost revenue due to privatization, the Act imposes what it calls a "revenue replacement fee." The "fee" is in fact a sales tax of 71.7% plus a flat fee of \$.75 per container (reduced to \$.25 in 2017), imposed at the wholesale level instead of the retail level.
- **Collects the tax from distillers and importers.** Instead of collecting the tax from the in-state parties who purchase the spirits (typically wholesalers in other states), the Act collects the tax from the "holder of a distilled liquor self-distribution permit," the distiller or importer *selling* the spirits. The tax is levied on every container that the permit holder either "transports into or sells in this state".
- **Favors "big-box" retailers over smaller local businesses.** Since the tax is imposed upon wholesale sales, the amount due on a sale will depend upon the price the purchaser negotiates for the product. Sales to large box stores with warehouses will generate less tax revenue than sales to stores with small volumes, a clear competitive advantage for the big grocers sponsoring the initiatives.
- **Makes calculating taxes a highly labor-intensive process.** The tax due on each individual bottle of spirits will depend on who sells that bottle into Oregon (distiller/importer or out-of-state third party); who buys it (a seller can sell the same bottle to different purchasers at different prices); the presence of discounts, financing, and other payment assistance; and the applicability of any of several potential exemptions, each of which may depend on the amount the seller has sold so far, the location of the sale, and a host of other factors.
- **Imposes an in-state tax exception that is unconstitutional.** In addition to more typical exceptions – *e.g.*, tax is not due on liquor that is unfit for consumption – the Act also exempts from taxation sales by a distiller to the public on the distiller's own premises, either by the drink or by the bottle. By its nature, that exception is available *only to in-state distilleries*. Taxes that treat in-state producers preferentially are generally unconstitutional under the Commerce Clause. Similar tax schemes in other states have been held unconstitutional for the same reason. If the courts hold the exception unconstitutional, the tax itself would be voided, leaving the state with no tax revenue at all.
- **Incorporates third-party exceptions that are complex and unclear.** Distilleries often do not sell directly to in-state parties, but instead through third parties located outside the state (which in turn sell to retailers in any number of states). Under the Act, that arrangement will *sometimes* render the third-party liable for paying the tax. *When* the third-party will be liable for the tax, and at what amount, is not entirely clear under the law -- and will be very difficult to track.
- **Incorporates exceptions that are ambiguous and prone to litigation.** The Act exempts from taxation a distiller's first \$400,000 in sales – but not on an annual basis. At best this exemption is a political bone thrown to some distillers to buy their

support; at worst this will be the cause of much litigation to discover the true intent of the exemption.

- **Relies on self-reported sales data.** The Act's tax framework depends on each distiller timely and accurately reporting the dollar amount of distilled spirits sales, the number of containers sold, and each container's price. The OLCC would have no ready means of verifying the accuracy of those reported sales numbers.
- **Requires the state to engage in its own "detective work" to evaluate proper tax payments.** In order for the OLCC to obtain data to which a distiller's reports can be compared, it must undertake slow and resource-intensive data-sleuthing – either by reconstructing a distiller's sales through other retailers' purchase reports, or by mounting its own investigation into the distiller's books and records – to determine the price and circumstances of sale on each individual bottle sold. Maintaining and organizing that data in a way that allows the state to audit accurately will be similarly costly in time and agency resources.
- **Requires a nominal \$1,000 bond.** The required "bond" from distillers – an amount meant to protect the state against nonpayment of the tax – is only \$1,000 per distiller, an amount equal to the tax due on less than 14 cases of liquor (at average price). Because the typical distiller would owe many thousands of times more, the bond would not realistically protect the state against nonpayment.
- **Complicates recovery of taxes by choosing to impose tax on sellers, wherever located.** By imposing the tax not on in-state purchasers, but on the distillers and importers who *sell* the product, the OLCC will be pursuing tax collection from many parties who are located entirely out of state – or even outside the country – and who have no property in Oregon. The time and resources necessary to recover unpaid taxes from such out-of-state parties would be significant, and will make the effort cost-prohibitive in all but the most egregious cases.
- **If the state is not successful in collecting the tax on an out-of-state seller, it will be extremely difficult to determine whether an in-state purchaser has to pay the tax and the amount due from that in-state purchaser.** If an importer in New York fails to pay the wholesale sales tax and the state is unsuccessful in its attempts to litigate and collect the tax from the New York company, the state may be able to go after the in-state purchaser for the tax due if the in-state purchaser "caused" the product to be transported into the state. However, it will be very difficult to determine who "caused" the product to be transported into the state, and since there is no common pricing to all retailers, different retailers would owe different amounts based upon the purchase price of the same product. The state would have to audit each retail purchaser of the product and mount collection efforts against each of the retailers. The cost of such an effort would be prohibitive.

The Price of a Bottle

Oregon Today:

Wholesale price to the Oregon Liquor Control Commission	\$10.00
Tax equivalent amount of markup	\$ 8.40
Cost of wholesale and retail operations	\$ 2.40
Price to the consumer	\$20.80

Oregon Under Grocer Initiatives:

Wholesale price before taxes	\$10.00
Wholesale sales tax (71.7%)	\$ 7.17
Container charge	\$.75
Price to the retailer (direct delivery)	\$17.92
Retailer margin (25% average) ¹	\$ 5.97
Price to the consumer²	\$23.89

Conclusion: Less Tax Revenue & Higher Price Under Grocer Initiatives

The total tax revenue to the state is less under the proposed initiatives (\$8.40 compared to \$7.92), yet the price to the consumer increases by \$3.09.

¹ Most of the large grocery chains in Washington State have an average retail margin on the sale of distilled spirits at 25%. Even with the lowest margin in the retail business (Costco claims a 14% margin), the price to the consumer for the same bottle of distilled spirits is \$20.84, still higher than that currently available in Oregon.

² There is no wholesale margin included in the analysis above because the example assumes that the product is shipped directly from the supplier to the retailer.