Department of Finance and Administration

Legislative Impact Statement

Bill: HB1749
Bill Subtitle: TO PERMIT THE DIRECT SHIPMENT OF VINOUS LIQUOR FROM A WINERY TO ARKANSAS RESIDENTS.

Basic Change :
Representative Broadaway

The bill allows for the direct shipment of vinous liquor by an in-state Arkansas winery or an out-of-state winery to a residence in Arkansas when the purchaser has physically visited the winery and made the purchase. The winery is limited to shipping one (1) case per calendar quarter from the in-state or the out-of-state winery location to an Arkansas consumer. Before beginning any shipments, the winery must first register with Alcoholic Beverage Control and pay a $25 annual permit fee. To obtain the permit, the winery must show a current license to manufacture wine that was issued by the state of domicile and a license issued by the U.S. Treasury's Alcohol and Tobacco Tax and Trade Bureau.

The bill also provides that the winery would be required to collect Arkansas taxes on all shipments to Arkansas consumers in the same manner as if the winery were an Arkansas Small Farm Winery. Arkansas taxes levied on wine and include the wholesale gallonage tax of $.75 per gallon, the wine case tax of $.05 per case, the special retail beverage excise tax of 3% of the sales price and the state, city and county sales taxes. The bill provides that the in-state or the out-of-state winery would not be required to collect Arkansas city and county taxes which would include the city or county sales and use taxes. This provision would violate the Streamlined Sales and Use Tax Agreement which requires a common tax base for sales for all types or merchandise. City and County sales and use taxes apply when the state sales and use taxes apply.

The bill provides that all permit fees or taxes, label fees, penalties, fines, proceeds of all forfeitures, special inspection fees, and costs associated with this subchapter shall be General Revenues. The proposal would be effective ninety (90) days after final adjournment of the 89th General Assembly.

Revenue Impact :
Annual Impact to State Revenues +$14,420

+$9,360 State Sales and Use Taxes @ 6.5%
+$4,320 State Beverage Excise Tax @ 3.0%
+$ 720 State Wine Excise Tax @ $.75 per gallon
+$ 20 State Wine Case Tax @ $.05 per case

[Revenue Impact based on an estimate of 100 cases of wine per calendar quarter purchased from wineries located outside of Arkansas and purchased when Arkansas consumers tour the wineries. Estimated cost per bottle $30.00.]

Taxpayer Impact :

Wineries located inside the state and outside the state will be required to register with the Alcoholic Beverage Control Division in order to ship wines to customers who have visited the winery. Out-of-state wineries would have new responsibilities in establishing proof of age for Arkansas consumers who purchase at the winery and request that the wine be shipped to Arkansas and additional accounting records for Arkansas tax reporting.

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1749
Bill Subtitle: TO PERMIT THE DIRECT SHIPMENT OF VINOUS LIQUOR FROM A WINERY TO ARKANSAS RESIDENTS.

Resources Required :

None

Time Required :
Adequate time is provided for implementation.

Procedural Changes :
Development of new reporting forms for out of state wineries and education of staff personnel of new out-of-state winery requirements.

Other Comments :

The proposal requires amendment for compliance with Arkansas laws.

Page 2 --- Line 24 --- The proposal would require the out-of-state winery to collect Arkansas sales tax. When required to collect Arkansas taxes on sales activities, out-of-state sellers do not collect Arkansas sales taxes but Arkansas Compensating Use taxes

Page 2 --- Line 24 --- Out-of-state sellers cannot be required by Arkansas law to collect Arkansas use taxes unless the seller has a physical presence in Arkansas. Commerce Clause protections of the U.S. Constitution would make this provision in the bill meaningless and the seller would not collect the Arkansas tax and Arkansas would have no authority to require such collection.

The bill does not provide for a credit against the Arkansas tax for legally imposed tax by another state. The other state's tax laws may require collection of taxes for the state where the out-of-state winery is located on these types of sales transactions. Without providing a credit against any Arkansas use taxes due for the taxes paid to the other state, the bill will violate the Streamlined Sales and Use Tax Agreement.

Page 2 --- Lines 28 through 30 ---The bill provides that the seller when collecting the Arkansas sales (in-state wineries) or use taxes (out-of-state wineries) would not be required to collect Arkansas City and County sales or use taxes. This provision violates the Streamlined Sales and Use Tax Agreement. Under the Agreement, a state must have one common tax base for all state, city and county taxes where all products are subject to taxation equally. A state may not provide for a tax exemption for some jurisdictions while taxing others.

Page 2 --- Lines 31 through 34 --- The bill provides that taxes collected by a winery would be submitted to DFA as directed without limitation under §§ 3-5-1605, 3-7-104, 3-7-201, and 3-7-111. This provision does not account for the state and local sales taxes reported as provided in the Arkansas Gross Receipts tax law or the Compensating Use Tax law.

Page 2 --- Line 36 --- It is not clear as to how an in-state or out-of-state winery would have knowledge that the shipping address used would be to a private residence when proving compliance with the shipping requirements.

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1749
Bill Subtitle: TO PERMIT THE DIRECT SHIPMENT OF VINOUS LIQUOR FROM A WINERY TO ARKANSAS RESIDENTS.

Legal Analysis :

HB1749 creates new law to allow wineries (both in-state and out-of-state) to ship wine directly to the private residences of Arkansas consumers if certain requirements are satisfied. The winery must first register with Alcoholic Beverage Control (ABC); provide ABC with a copy of its current license to manufacture wine issued by the state of domicile and the Alcohol and Tobacco Tax and Trade Bureau; and pay a registration fee of $25.00. The registration must be renewed each year and a $25.00 renewal fee must be paid. Only wine that is purchased by the consumer at the winery with proof that the consumer is age 21 or older can be shipped.

The winery must collect all sales and excise taxes as if the sale took place on the premises of an Arkansas Small Farm Winery. However, the winery does not have to collect a local tax imposed by a municipality, town or other political subdivision of the state.

Wine may only be shipped to a private residence. A winery can ship only one case of wine per consumer in any calendar quarter. The shipment must have a shipping label provided by ABC affixed to the package. The fee for the shipping label cannot exceed $10.00. The wine may only be delivered during the hours that alcoholic beverages are permitted to be purchased in the state.

The Department of Finance and Administration shall adopt rules to implement the new law. All funds derived from the new law are to be designated as general revenue and deposited to the credit of the State Apportionment Fund.

Currently, no winery is permitted to ship directly to a consumer in Arkansas. Small farm wineries in Arkansas are required to collect local taxes. As written, the bill could be interpreted to allow an in-state winery to ship wine on which local tax was not collected. If this is not the intent, the language of the bill should make that clear.

Wineries shipping directly to consumers would be required to collect the following taxes:

$0.75 per gallon tax on wine
$0.25 per gallon tax on light wine
$0.05 per case of wine
3% excise tax
6% general excise tax

Effective Date: 90 days after adjournment