



BI Update

May 2009

Federal Beer Excise Tax:

On Tuesday, May 12, Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) held a hearing on Financing Comprehensive Healthcare Reform. Senator Baucus invited healthcare policy experts, tax policy experts, and economists to join Finance Committee members to discuss the tax and savings options that the Committee should consider as it works to craft a healthcare reform bill. Senators and experts discussed a wide variety of ideas for looking for funding within and outside the healthcare system.

President Obama has indicated that health care reform must be enacted this year, as he clearly understands that politically risky measures are unlikely to move through Congress next year when House members and one third of the Senate face reelection. Congressional leaders have an extremely ambitious timetable throughout the summer for action on health care measures in several committees.

On May 19, the Finance Committee released a list of options to help pay for the administration's health care package. The list includes a 150% increase in the federal beer excise taxes from \$18 a barrel to close to \$45 a barrel. That increase would be accomplished by equalizing the beer, wine, and spirits tax rates at a single rate of \$16 per proof gallon, so the proposal has implications for the entire alcohol beverage industry. Beer Institute and member staff are working diligently to educate members of the Senate Finance Committee about the economic contribution of the beer industry, the regressive nature of beer excise taxes, and the devastating effect such an increase would have not only on the beer industry but also on several state economies and the national economy.

Additional members of the Senate Finance Committee are Senators Jeff Bingaman (D-NM), Jim Bunning (R-KY), Maria Cantwell (D-WA), Thomas Carper (D-DE), Kent Conrad (D-ND), John Cornyn (R-TX), Mike Crapo (R-ID), John Ensign (R-NV), Mike Enzi (R-WY), Orrin Hatch (R-UT), John Kerry (D-MA), Jon Kyl (R-AZ), Blanche Lincoln (D-AR), Robert Menendez (D-NJ), Bill Nelson (D-FL), John Rockefeller (D-WV), Pat Roberts (R-KS), Charles Schumer (D-NY), Olympia Snowe (R-ME), Debbie Stabenow (D-MI), and Ron Wyden (D-OR). If you live in any of these states, please contact your Senator to voice your strong opposition to increasing the federal beer excise tax. Contact Rick Goddard at BI for more information.

Direct Shipping Litigation Update:

Over the last several years, the Beer Institute has monitored and filed amicus briefs in pending lawsuits challenging state laws that restrict direct shipping of alcohol beverages to consumers or to retailers. Recent cases reflect the fact that states have enacted laws that create exceptions to the three-tier system, usually allowing the sale of a limited quantity of wine directly to consumers.



Dozens of new laws have been enacted in response to the 2005 U.S. Supreme Court "*Granholm* decision" that invalidated New York and Michigan restrictions on direct shipment of wine to consumers. While most cases decided since 2005 involve laws relating to wine, the underlying principles could affect state distribution systems for all alcohol beverages.

In early May, the U.S. Supreme Court refused to review an opinion from the 7th Circuit Court of Appeals, which had upheld Indiana's law that requires residents of that state to make wine purchases in person at a winery before the wine may be shipped into Indiana. The Supreme Court decision not to review the lower court opinion means that Indiana's "in-person sales requirement" remains in effect. Three other cases are now pending before federal appellate courts. The laws in question are New Jersey's ban on direct shipping and Arizona and Massachusetts direct shipping privileges for small wineries based on production volume (commonly referred to as a "gallonage cap"). The Beer Institute will continue to monitor developments in these cases as they move toward resolution. If you are interested in further information on litigation in this area, please contact BI's General Counsel.

TTB User Fees:

President Obama's proposed 2010 budget was delivered to Congress in May and it includes imposition of user fees on alcohol beverage industry members including brewers, wholesalers, and retailers. The user fee proposal calls for collection of \$80 million which would be used to maintain the operations of the Alcohol and Tobacco Tax and Trade Bureau (TTB). The President's budget is the first step in a lengthy legislative process that is necessary to fund federal agencies for the next fiscal year, which starts on October 1st. Similar user fee proposals have been defeated in recent years through concerted industry opposition, but industry representatives are facing several simultaneous legislative challenges.

The President's user fee proposal would produce about the federal revenue raised by the Special Occupational Tax (SOT). That tax was set at \$1000 for large brewers and \$500 for small brewers. Retailers, who paid \$250 annually, worked for almost two decades to achieve the repeal the SOT. The tax was suspended in 2006 and then repealed beginning in 2008, but related registration and recordkeeping requirements remain in effect.

The Beer Institute and other industry associations are discussing the user fee proposal to determine whether our historic position should be modified in light of federal budget situation and excise tax and food safety legislation now under consideration in Congress.

