SACRAMENTAL WINES EXCISE TAX EXEMPTION

EVALUATION SUMMARY

SEPTEMBER 2018
2018-TE7

THIS EVALUATION IS INCLUDED IN COMPILATION REPORT SEPTEMBER 2018

YEAR ENACTED	1933
REPEAL/EXPIRATION DATE	None
REVENUE IMPACT	$2,600 (CALENDAR YEAR 2017)
NUMBER OF TAXPAYERS	Could not determine
AVERAGE TAXPAYER BENEFIT	Could not determine
IS IT MEETING ITS PURPOSE?	Partially, because it is not applied to all sales

WHAT DOES THIS TAX EXPENDITURE DO?

This expenditure excludes sacramental wines that are used for religious purposes from the liquor excise tax.

WHAT IS THE PURPOSE OF THIS TAX EXPENDITURE?

Statute does not explicitly state a purpose for this tax expenditure. We inferred that the purpose is to exempt wine used for religious purposes from liquor excise taxes to avoid taxing religious organizations.

WHAT DID THE EVALUATION FIND?

Although the Sacramental Wines Exemption is meeting its purpose for sales of sacramental wine from specialized sacramental wine distributors to religious organizations, it is likely not being applied to sales of sacramental wines from liquor stores. The exemption has a minimal economic impact.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly could consider amending the Sacramental Wines Exemption to accommodate multiple distribution paths for sacramental wines and to ensure that all religious groups are treated equally.

SACRAMENTAL WINES EXCISE TAX EXEMPTION

EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

Following the end of the Prohibition Era (1920–1933), Colorado was one of many states that legalized the production, sale, and use of liquor. With the legalization of liquor for consumption in 1933, Colorado created an excise tax on alcoholic beverages, which included a tax exemption for medicinal and sacramental liquors. Two years later, in 1935, the General Assembly amended the statute [Section 44-3-106(1), C.R.S.] to remove medicinal liquors and to limit the exemption to "sacramental wines sold and used for religious purposes." Statute has retained this wording ever since.

Excise taxes are taxes paid when purchases are made of a specific good and are often included in the price of the product and passed on to consumers. Liquor excise taxes are paid by distributors, manufacturers, and wholesalers the first time alcoholic beverages are sold or transferred within Colorado, which typically occurs when a licensed liquor distributor sells alcoholic beverages to a retailer or when a Colorado-based manufacturer sells alcoholic beverages to a distributor. The distributors, manufacturers, and wholesalers are required to report and remit the liquor excise taxes to the Department of Revenue using Form DR 0442 on a monthly basis. However, because the Sacramental Wines Exemption excludes wines used for religious purposes from the liquor excise tax and all related regulations, distributors and manufacturers are not required to apply the excise tax to these sales or report them to the Department of Revenue.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statute does not explicitly identify the intended beneficiaries of this exemption. We inferred, based on the legislative history and Colorado's tax structure, that the intended beneficiaries are religious organizations, because liquor excise taxes are typically passed on to final consumers in the form of higher prices. Producers of sacramental wine may also indirectly benefit if religious organizations decide to purchase greater quantities or more expensive sacramental wine due to the exemption. However, because the savings most religious organizations realize from the exemption are relatively small, it appears unlikely that the exemption would change their purchasing decisions enough to provide any significant benefit to producers.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

Statute does not explicitly state a purpose for this exemption. We inferred, based on the legislative history, Colorado's tax structure, and language in the exemption that the purpose is to avoid taxing religious organizations. Although statute does not limit the exemption to purchasers who are religious organizations, the excise tax on liquor and the Sacramental Wines Exemption were created at the end of Prohibition, during which time religious organizations were the only entities authorized to purchase sacramental wine under the Volstead Act, which enforced the 18th Amendment's prohibitions on liquor.

IS THE TAX EXPENDITURE MEETING ITS PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We determined that the Sacramental Wines Exemption is meeting its purpose for most sales of sacramental wine purchased by churches from religious supply stores, but may not be meeting its purpose for sales made through liquor stores.

Statute does not provide quantifiable performance measures for this expenditure. Therefore, we created the following performance measure based on the purpose we inferred, publicly available information on the typical practices related to the purchase of sacramental wine, and our discussions with stakeholders.

PERFORMANCE MEASURE: *Does the expenditure effectively exempt all purchases of wine for religious purposes from liquor excise taxes?*

RESULT: In practice, only certain purchases of sacramental wine are exempt from the liquor excise tax. According to our discussions with stakeholders, including representatives from religious organizations, sacramental wine producers, and liquor distributors and stores, this occurs because of varying practices for purchasing sacramental wines. Specifically, for Christian churches that use sacramental wine, most purchase the wine from religious supply stores in Colorado. Most of this wine comes from two out-of-state sacramental wine producers and based on discussions with representatives from these producers and the religious supply stores that sell sacramental wines, neither are paying the excise tax on sacramental wine sales made in Colorado. Therefore, Christian churches purchasing wine made by these producers from religious supply stores are not paying the tax through higher prices. However, there are many smaller producers of sacramental wines that sell directly to churches, religious organizations, and suppliers and we lacked sufficient data to determine the extent to which they also apply the exemption.

In contrast, sacramental wine purchased through liquor stores may include the excise tax. For example, this may occur with purchases of kosher wines, which are used for Jewish religious ceremonies. According to representatives from Jewish religious organizations, synagogues typically purchase kosher wines from liquor stores because they are not commonly sold through specialized religious supply stores similar to those that supply Christian churches. In addition, Jews who follow a kosher diet purchase kosher wines at liquor stores for home consumption. We contacted two liquor distributors in the state, who confirmed that, like all the wine they sell, the excise tax is applied to their kosher wines and it would be difficult to apply the exemption because to do so they would need to determine which purchases would ultimately be used for religious purposes, as opposed to regular home consumption. They reported that these wines make up a small percentage of their overall sales, making the administrative costs of attempting to apply the exemption greater than the potential benefit.

We could not estimate the percentage of wine that qualifies for the exemption, but that may nevertheless be taxed, because sales of sacramental wines are not reported to the Department of Revenue and we could not identify a reliable source of information to estimate the amount of wine sold by liquor stores that is used for religious purposes.

WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURE?

The Sacramental Wines Exemption has very little impact on state revenue or the State's economy. Based on the limited data available to us, which was provided voluntarily by some wine producers, we estimate that the State lost about $2,600 in liquor excise taxes in 2017 as a result of the Sacramental Wines Exemption. Given the relatively small economic impact, it is unlikely that taxpayers are making decisions based on the existence of this expenditure and the economic costs and benefits are likely minimal.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

Eliminating this exemption would likely have a small impact on the current beneficiaries. The excise tax on vinous liquor (i.e., wine) is about $.07 per liter, plus a $.01 surcharge and an additional excise tax of between $.01 and $.05 per liter, depending on the volume sold by the distributor. When all of the excise taxes and surcharges are combined, on average, a typical 750 milliliter bottle of wine is subject to about $.085 in excise tax. Therefore, a church that purchases 100 bottles of wine per year would incur additional expenses of about $8.50

if the full cost of the excise tax were transferred to the church through increased prices. In addition, distributors and manufacturers of sacramental wines would have to accommodate additional reporting and collection requirements required by the Department of Revenue.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

A tax expenditure for sacramental wine is available in 18 states. However, not all states provide an exemption from taxation at the initial point of sale like Colorado. Instead, some states require religious organizations to seek a refund from the state for taxes paid on sacramental wine.

ARE THERE OTHER TAX EXPENDITURES OR PROGRAMS WITH A SIMILAR PURPOSE AVAILABLE IN THE STATE?

We identified one other tax expenditure or program in the State with a similar purpose—the Sales to Charitable and Religious Organizations Sales Tax Exemption [Section 39-26-718(1)(a), C.R.S.], which exempts most religious organizations from paying sales taxes on all types of products normally subject to sales tax, including wine used for religious purposes. While the Sales to Charitable Organizations Exemption is broader than the Sacramental Wines Exemption and applies to a different type of tax, they both limit the tax burden on religious organizations for purchases of wine used for religious purposes.

WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURE?

The Department of Revenue does not collect any data and there is no other central source of data related to this exemption. Although the Department collects monthly reports from licensed liquor distributors on excise taxes through Form DR 0442, this form does not collect any information related to the Sacramental Wines Exemption and manufacturers and distributors of sacramental wine that do not sell other alcoholic beverages are not currently required to file excise tax reports with the Department of Revenue. The General Assembly could amend statute to change the excise tax reporting requirements and direct the Department of Revenue to modify the form, and make changes in GenTax to collect data on the exemption, which would allow us to create a more accurate revenue impact estimate for the exemption and better identify the beneficiaries. However, this type of reporting may not be cost effective because it would impose an additional burden on distributors and manufacturers and would require additional resources at the Department of Revenue to cover programming costs and staff time, which would likely be larger than the exemption's revenue impact to the State (see the Tax Expenditures Overview section of this Compilation Report for details on the limitations of Department of Revenue data and the potential costs of addressing these limitations).

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

As currently applied, the Sacramental Wines Exemption may provide a small benefit to some religious organizations while excluding others based on how the wine is purchased. In addition, because the current exemption only applies to wine, it may treat religious organizations that use non-vinous sacramental liquors for ceremonies differently than those that use wine. Further, although the purpose of the exemption was likely to avoid taxing religious organizations, the statutory language does not limit the exemption to only sacramental wine purchased by religious organizations, and individuals who purchase wine for religious purposes, such as ceremonies conducted at home, may also pay the excise tax as part of the purchase price. Although we did not conduct a full legal analysis, this difference in treatment could be problematic under the U.S. and Colorado Constitutions, both of which prohibit the State from enacting laws that give preference to one religious denomination over another, and some U.S. Supreme Court rulings, which under some circumstances, have found that governments should not favor a religious purpose over a secular purpose. On the other hand, it is unclear whether taxpayers who do not benefit from the exemption are experiencing a sufficient burden (i.e., the additional cost of paying the excise tax) to result in a violation of the U.S. or Colorado Constitutions.

To address these issues, the General Assembly could consider amending the Sacramental Wines Exemption to accommodate the different distribution paths sacramental wines take to get to religious organizations and individuals who conduct religious ceremonies using wine. For example, one option could be to allow for rebates of liquor excise taxes paid on sales of sacramental wine made by liquor stores, as is done in several other states. However, because of the small benefit this would provide to consumers (about $.085 per bottle of wine), there may be few potential beneficiaries who would take advantage of a rebate and the cost of administering the rebate program would likely exceed the benefit. In addition, though the use of non-vinous liquors for religious purposes is uncommon, the General Assembly could also consider expanding the exemption to cover the sacramental use of all alcoholic beverages. Alternatively, the General Assembly could ensure equal treatment of all religious groups by eliminating the exemption altogether.