

INTERSTATE SALES OF ALCOHOL EXCISE TAX EXEMPTION EVALUATION SUMMARY



JULY 2019
2019-TE21

THIS EVALUATION WILL BE INCLUDED IN COMPILATION REPORT SEPTEMBER 2019

YEAR ENACTED	1935
REPEAL/EXPIRATION DATE	None
REVENUE IMPACT	\$25 million CALENDAR YEAR 2017
NUMBER OF TAXPAYERS	90
AVERAGE TAXPAYER BENEFIT	\$277,777
IS IT MEETING ITS PURPOSE?	Yes

WHAT DOES THIS TAX EXPENDITURE DO?

The Interstate Sales of Alcohol Excise Tax Exemption creates an excise tax exemption for alcoholic beverages that are sold or transferred to distributors or wholesalers outside of the state.

WHAT IS THE PURPOSE OF THIS TAX EXPENDITURE?

Statute does not explicitly state a purpose for this tax expenditure. We inferred that its purpose is to ensure that alcoholic beverages sold in other states are not subject to double taxation.

WHAT DID THE EVALUATION FIND?

We determined that the expenditure is widely used by eligible taxpayers and is meeting its purpose.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

We did not identify any policy considerations related to this expenditure.

INTERSTATE SALES OF ALCOHOL EXCISE TAX EXEMPTION

EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

The Interstate Sales of Alcohol Excise Tax Exemption (Interstate Sales of Alcohol Exemption) allows manufacturers and distributors of alcoholic beverages to deduct or receive a refund for the tax they had paid on alcoholic beverages that are sold or transferred to a manufacturer, distributor, wholesaler, retailer, or consumer outside the State of Colorado [Section 44-3-503(1)(a), C.R.S.]. The expenditure was enacted in 1935 and has not changed since that time.

Colorado levies an excise tax on alcoholic beverages, which is calculated based on the volume of the beverages and the following tax rates, which vary based on the type of beverage:

- \$0.08 per gallon for malt liquor, beer, and hard cider
- \$0.0833 per liter for wine
- \$0.6026 per liter of spirituous liquor

Alcohol excise taxes are due from the seller the first time alcoholic beverages are sold, transferred, or otherwise disposed of within Colorado. This typically occurs when a manufacturer sells Colorado-made alcoholic beverages to a distributor or when a distributor sells alcoholic beverages shipped from outside the state to a Colorado wholesaler or retailer. Taxpayers are required to report and remit the alcohol excise taxes to the Department of Revenue on a monthly basis using the Department of Revenue's Monthly Report of Excise Tax for Alcohol Beverages (Form DR 0442).

To claim the Interstate Sales of Alcohol Exemption, taxpayers typically record the amount of alcoholic beverages sold outside the state on line 8 of Department of Revenue Form DR 0442. Alternatively, taxpayers may claim the exemption as a refund using the Department of Revenue's Claim for Refund Form (Form DR 0137) in cases where a previous return must be amended. In addition to filing Form DR 0442 or Form DR 0137, taxpayers must report out-of-state sales of alcoholic beverages on the Department of Revenue's Liquor and Beer Export Sales Report (Form DR 0443).

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statute does not directly identify the intended beneficiaries of this exemption. Based on statutory language and similar provisions in other states, we inferred that the intended beneficiaries are alcoholic beverage manufacturers that make sales outside the state because the expenditure lowers their overall tax liability. Colorado is a national leader in alcoholic beverage production, especially beer production, and the State's manufacturers ship a significant quantity of alcoholic beverages outside the state. Although distributors are also eligible for the exemption, in practice, they have exclusive territories contained within the state and rarely export alcoholic beverages.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

Statute does not explicitly state a purpose for this tax expenditure. Based on our review of statute and similar provisions in other states, we inferred that its purpose is to avoid double taxation of alcoholic beverages sold in other states. Specifically, every state has some form of alcohol excise tax, and an exemption for interstate sales is a common structural provision that is necessary to avoid taxing the same products multiple times when they are sold through interstate sales.

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

We determined that the Interstate Sales of Alcohol Exemption is meeting its purpose. Statute does not provide quantifiable performance measures for this expenditure. Therefore, we created and applied the following performance measure to determine the extent to which the exemption is meeting its inferred purpose:

PERFORMANCE MEASURE: *To what extent is the Interstate Sales of Alcohol Exemption claimed by eligible businesses to avoid the double taxation of products shipped outside the state?*

RESULT: We found that the Interstate Sales of Alcohol Exemption is widely used by eligible taxpayers. Specifically, according to Department of Revenue data, 90 businesses claimed the exemption on about 300 million gallons of beer, wine, and spirits shipped out of state during Calendar Year 2017. Furthermore, although we lacked data to assess whether all eligible taxpayers took the exemption, in our discussions with stakeholders, we found that businesses are well-aware of the exemption and it is commonly claimed by eligible businesses to avoid the payment of excise taxes on exported products.

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

The Interstate Sales of Alcohol Exemption reduced state revenue by about \$25 million and saved taxpayers the same amount in Calendar Year 2017, based on data reported by the Department of Revenue. Of the 90 businesses that claimed the exemption, 10 accounted for 98 percent of the amount claimed. This figure includes the total amount taxpayers claimed using Form DR 0442, which is the form taxpayers typically use to claim the exemption. However, there could be a small additional revenue impact that is not included in this figure for taxpayers who instead claimed the exemption by filing for a refund

using Form DR 0137, for which the Department of Revenue is unable to provide data.

Because alcoholic beverage excise taxes are typically passed on to consumers in the form of higher prices, the savings from the exemption may have been passed on to consumers in other states in the form of lower prices.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

If the Interstate Sales of Alcohol Exemption were eliminated, Colorado-based manufacturers of alcohol would be subject to excise taxation on their products, both in Colorado and in the jurisdiction in which the products are eventually sold. Because every other state has a similar exemption, eliminating it in Colorado would make Colorado an outlier among the states and would significantly increase the excise taxes Colorado manufacturers pay. Specifically, according to the Department of Revenue, the State collected \$45.7 million in alcoholic beverage excise taxes in Fiscal Year 2017. In comparison, based on data from the Department of Revenue, \$25 million in additional excise taxes would have been owed in Fiscal Year 2017 if the exemption was not available, a 55 percent increase. Although Colorado's excise taxes are relatively low (the equivalent of \$0.05 on a six pack of beer), this could make the State's alcoholic beverage industry less competitive nationally and could make Colorado less attractive to businesses looking to establish manufacturing facilities in the state.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

Forty-four states (excluding Colorado) and the District of Columbia exempt interstate sales of alcohol from excise taxes. Five additional states do not specifically exempt interstate sales of alcohol from excise taxes, but follow the exemption in practice because they apply excise taxes at the point of sale or have a state agency that serves as that state's sole distributor and wholesaler of alcohol. Manufacturers in those states are not directly responsible for the payment of excise tax and as

a result, are not at risk of being double taxed on products they export to other jurisdictions.

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

We did not identify any similar tax expenditures or programs with a similar purpose.

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

The Department of Revenue was unable to provide data from its Claim for Refund Form (Form DR 0137), which some taxpayers use to amend their returns after initial submission in order to claim the Interstate Sales of Alcohol Exemption as a refund. Form DR 0137 combines refund requests related to many different tax provisions, and these refund requests cannot be disaggregated for the purposes of determining the amount attributable to the Interstate Sales of Alcohol Exemption. To collect this additional information, the Department of Revenue would need to add a reporting line specifically for the exemption on Form DR 0137 and add programming to GenTax, its tax processing and information system, to capture and extract this information, which would require additional resources (see the Tax Expenditures Overview Section of the Office of the State Auditor's *September 2018 Tax Expenditures Compilation Report* for additional details on the limitations of Department of Revenue data and the potential costs of addressing the limitations).

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

We did not identify any policy considerations related to the Interstate Sales of Alcohol Exemption.