

TESTIMONY TO HOUSE WAYS AND MEANS

January 21, 2021

The Vermont Brewers Association is a nonprofit organization that was founded in 1995 to promote and strengthen the culture of craft brewing in Vermont through marketing, education and advocacy for Vermont made beer. We achieve our mission and support a top economic driver in the state by holding two annual fundraisers – The Vermont Brewers Festival at Killington in March and Burlington in July. It came to our attention that we had been paying taxes where there should have been an exemption in August of 2019. I am testifying today in the interest of highlighting that exemption.

The Tax Department has asked this Committee to “clarify” existing tax law, 32 VSA § 9202 (10)(D), to confirm that alcohol sales are taxable under the Rooms and Meals Tax when the alcohol is part of a fundraiser or public-awareness activity or event for a non-profit organization.

The Vermont Brewers Association does not agree that this is a clarification to confirm an existing tax. We believe this is a significant policy change.

What the Department is seeking is a change from current law that has for decades exempted these alcohol sales from taxation. They want to change tax-exempt sales to taxable sales.

The Legislature is of course free to re-write the existing statute to change tax-exempt alcohol sales to taxable sales. But the legislature should be fully informed about the facts and the history before making such a sweeping change to the tax laws that will have a huge impact on a growing sector of the Vermont economy – the craft beer and spirits sector (beer, wine, spirits, cider, mead, etc.) and the farm-to-table sector.

In coming before you and seeking the “clarification,” to confirm existing practice, the Department does not tell you three important things:

First, that the Department issued a legal opinion in 1989 – an opinion that has never been rescinded – showing that the Department has for over 30 years interpreted this very same statute to exempt such alcohol sales from taxes – exactly the opposite of the approach it is now taking in its request for “clarification.” The Department’s own document shows that the only plausible reading of the current statute is that the legislature intended these alcohol sales to be tax-exempt.

Second, that the Department has been involved in a dispute for over a year with the Vermont Brewers Assoc. in which the Department has taken the position that such alcohol sales are not exempt, and it did not tell the VBA about the Department’s 1989 opinion showing that the Department has itself always deemed such sales to be exempt. The VBA’s own independent research turned up the Department’s policy document, at the VBA’s own expense.

Third, other non-profit organizations that include alcohol in fundraising and public awareness events – just like the VBA’s Brewers Festivals – have never paid this tax and have never been asked to by the Department.

With that background in mind, the issue before the Committee is the proper interpretation of 32 VSA § 9202(10)(D) and 9202(11). The plain language of those sections means that alcoholic beverages sold by a non-profit organization as part of its fundraising and public service missions are not included in the definition of “taxable meal” for purposes of the rooms and meals tax. This would include such fundraising and publicity events as the Vermont Brewers Festival, charity and religious fundraisers, and farm-to-table dinners by breweries, wineries, etc.

The VBA reached the conclusion that its fundraising events are tax exempt based on (i) the plain language in §9202(11), and (ii) the relevant legislative history.

The Statute.

Section 9202(11) defines the term alcoholic beverages for purpose of the rooms and meals tax, which reads:

(11) "Alcoholic beverages" means any malt beverages, vinous beverages, spirits, or fortified wines as defined in 7 V.S.A. § 2 and served for immediate consumption. "Alcoholic beverages" do not include any beverages served under the circumstances enumerated in subdivision (10)(D)(ii) of this section under which beverages are excepted from the definition of "taxable meal."

Legislative History:

Prior to 1989, a 6% meals and rooms tax was imposed on any taxable meal, which by definition included any “food or beverage, including alcoholic beverages”, sold under the circumstances prescribed in the statute. The definition of taxable meal also went on to exclude food and beverages sold at fairs, festivals and similar events by nonprofit organizations. That exclusion or exemption was enacted in [1964.]

In 1989, the Legislature revised the meals and rooms tax by drawing a distinction between alcoholic beverages and non-alcoholic beverages by increasing the tax on alcoholic beverages to 10% while keeping the tax at 6% on all other food and beverages. That change made it necessary to revise the definition of taxable meal to exclude alcoholic beverages.

As indicated in the Department’s 1989 legal opinion authored by Betsey Anderson, the Department believed that the change inadvertently made the sale of alcoholic beverages at fairs and festivals by exempt organizations to be taxable. Accordingly, the Department did two things (i) it continued to apply the exemption to sales of alcoholic beverages, and (ii) introduced legislation fixing the error and restoring the exemption.

This was accomplished in 1990 by the addition of the sentence highlighted above in section 9202(11).

Our Request:

The statute that this body enacted years ago is clear that alcohol sales are exempt when they are part of the revenues generated by ticket sales by non-profit organizations, such as the VBA, dedicated to furthering the public-service missions of those organizations. The annual Winter and Summer Brewers Festivals are just such events and act as our primary fundraisers. The legislature should not change the law to tax ticket revenue when such sales have been exempt for more than [50] years. Granting the change that the Department now seeks will not affect just the VBA; it will impose a new tax on dozens of other organizations that include alcohol in ticket sales for fundraisers and public awareness events. But if you decide to remove the exemption, **we would like acknowledgement that this is a policy change (as opposed to a clarification), that it is not retroactive, and that the plain language of the current statute is clear.** It is unfortunate that our small organization, that prides itself on compliance with laws and regulations, has had to spend tens of thousands of dollars on legal support to argue over the plain meaning of the law. As an Association we are clear that we have been paying taxes for which we should have been exempt for decades. Our only desire is for parity with other nonprofit fundraisers and a clear path forward on any and all taxation related to our events.