

OCCASIONAL SALE OF LIQUOR BY PUBLIC AUCTION EXEMPTION

EVALUATION SUMMARY



SEPTEMBER 2018
2018-TE6

THIS EVALUATION IS INCLUDED IN COMPILATION REPORT SEPTEMBER 2018

| | |
|----------------------------|------|
| YEAR ENACTED | 1935 |
| REPEAL/EXPIRATION DATE | None |
| REVENUE IMPACT | None |
| NUMBER OF TAXPAYERS | None |
| AVERAGE TAXPAYER BENEFIT | None |
| IS IT MEETING ITS PURPOSE? | No |

WHAT DOES THIS TAX EXPENDITURE DO?

This tax expenditure establishes an excise tax exemption for liquor, including beer, wine and spirits, sold through a public auction that came into the seller's possession under one of the following circumstances: (1) the seller possesses the liquor and the owner has failed to claim the liquor or furnish instructions for its disposition, (2) the seller obtains the liquor as part of the foreclosure of a lien, (3) the liquor has been salvaged or damaged in transit, or (4) the seller operates a charitable organization and receives the liquor as a donation. Typically, excise tax is paid by the entity with a Colorado liquor license at the time of first transfer within the state and this exemption relieves the seller from the requirement to be licensed and to pay the excise tax

WHAT IS THE PURPOSE OF THIS TAX EXPENDITURE?

Statute does not explicitly state a purpose for this tax expenditure. We infer that the purpose is to simplify taxpayer compliance and decrease state administrative costs.

WHAT DID THE EVALUATION FIND?

Our evaluation found that the tax expenditure is likely not being used.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly could consider repealing this exemption.



OCCASIONAL SALE OF LIQUOR BY PUBLIC AUCTION EXEMPTION

EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

The excise tax exemption for Occasional Sales of Liquor by Public Auction [Section 44-3-106(3)(a), C.R.S.] applies to auctions for the disposal of liquor, including beer, wine and spirits, that lawfully came into the possession of the seller under the following circumstances:

- Failure of the owner to claim the liquor or furnish instructions for disposition of it (e.g., if a deceased person did not include instructions in their will for who will inherit their wine collection).
- Foreclosure of lawful lien (e.g., if liquor is used as collateral on a loan, and the loan is not repaid).
- Salvage of the liquor or shipments damaged in transit (e.g., if the liquor's packaging is damaged so it is no longer saleable through retail but still has value).
- Lawful donation of liquor to a charity.

The Occasional Sales of Liquor by Public Auction Exemption was enacted in 1935 and it has remained largely unchanged since then, with the exception of expanding it in 1994 to include lawful donation of liquor to a charity. The seller is not required to pay excise taxes and is not subject to liquor licensing requirements for transactions covered by the exemption and likewise does not need to comply with the reporting requirements for licensed liquor distributors or retailers. However, statute [Section 44-3-106(3)(b), C.R.S.] requires that the “state

licensing authority” (i.e., the Division of Enforcement, within the Department of Revenue) “shall be presented records of all transactions” subject to the Occasional Sales of Liquor by Public Auction Exemption, though the process for such reporting is not defined by statute or the Department of Revenue. In addition, because the exemption applies to the excise tax but not to State sales tax, sellers and auctioneers who regularly conduct retail sales, and who are required to file sales tax returns, must report the value of the Occasional Sales of Liquor by Public Auction Exemption on Retail Sales Tax Return (Form DR 0100). Sellers whose only retail sales are occasional sales of liquor by public auction, may not be required to obtain a sales tax license [Section 39-26-103(6) C.R.S.] or file a Retail Sales Tax Return if their total sales do not exceed \$1,000 annually [Section 39-26-103(9)(d), C.R.S.] but they must file an annual report of casual sales with their income tax return.

It is important to note that the Occasional Sales of Liquor by Public Auction Exemption is distinct from other provisions related to the auction of liquor. Specifically, public auctions related to tax compliance (e.g., when a business fails to pay its state or local taxes and its property is sold at auction) are covered under Section 39-21-114, C.R.S., and the exemption does not apply.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statute does not explicitly identify the intended beneficiaries of this exemption. We inferred that the intended beneficiaries are entities or individuals that come into possession of liquor under the specific circumstances identified in the exemption and the public who would purchase liquor through a public auction.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

Statute does not explicitly state a purpose for this tax expenditure. Based on our review of tax policy best practices, we inferred that the purpose is to simplify taxpayer compliance and decrease state

administrative costs. According to the *Tax Policy Handbook for State Legislators, 3rd Edition*, published by the National Conference of State Legislatures, “A quality tax system facilitates taxpayer compliance by minimizing the time and effort necessary to comply with the law. It also minimizes the cost of the state administrative apparatus necessary to collect revenue, enforce the law, and audit to ensure compliance with the law.” At the time it was created, the Occasional Sales of Liquor by Public Auction Exemption applied to limited sales by people or entities that did not typically sell liquor. Imposing an excise tax on these types of sales may have increased the State’s administrative costs without a large increase in tax revenue. Thus, we inferred that this exemption was intended to increase the efficiency and effectiveness of the State’s tax system by easing the compliance burden for taxpayers and decreasing administrative costs for the State.

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

We determined that the Occasional Sales of Liquor by Public Auction Exemption is not meeting its purpose because we were unable to find evidence that public auctions of liquor covered by the exemption are occurring.

Statute does not provide a quantifiable performance measure for this exemption. Therefore, we evaluated the Occasional Sales of Liquor by Public Auction Exemption using the following performance measure that we inferred based on general principles of an efficient tax system.

PERFORMANCE MEASURE: *Are taxpayers using this exemption to ease their administrative burden and avoid the excise tax on liquor?*

RESULT: It appears that taxpayers are not using this tax exemption. Because these sales are exempt from excise tax and liquor licensing requirements, there is not currently a Department of Revenue form to capture the amount of foregone excise tax. The sales tax from these sales

may be captured on the Retail Sales Tax Return form (DR 0100) but the sales tax form does not include a separate line for liquor sold at public auction and some sellers may not be required to file a sales tax return, and although there is a Retail Sales Tax Return for Occasional Sales (DR 100A) the data from this form is not captured by GenTax, we were not able to determine if any taxpayers have claimed this exemption. Therefore, we interviewed Department staff from the Division of Liquor Enforcement, which oversees the sale of liquor in Colorado, and the Division of Taxation, which oversees the State's sales tax system, and learned that the Department has no historic or current record of the exemption being applied to a sale. We also conducted some independent internet research, but were not able to identify any public auctions involving liquor that have occurred where this exemption would apply. Based on this information, it appears that sales that would qualify for the exemption are likely not occurring, or are rare.

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

We did not identify any economic costs or benefits to the exemption since it is likely not being used.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

If the exemption was eliminated, there would be little, or no, impact on the beneficiaries.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES OR THROUGH OTHER PROGRAMS?

We were unable to identify any similar expenditures that apply only to sales of liquor in other states. Ohio, however, has an exemption for occasional sales conducted by an auctioneer.

In addition, we did not identify any similar tax expenditures or

programs in the state involving public auctions of liquor. Senate Bill 18-067, which went into effect on March 1, 2018, authorized the private auction sale of liquor by charities for fundraising purposes. However, the auctions authorized by the bill are different from those covered by the Occasional Sales of Liquor by Public Auction Exemption because they are private, as opposed to public. Additionally, Senate Bill 18-067 does not contain an excise tax exemption, though occasional sales by charities are exempt from sales tax by Section 39-26-718(1)(b), C.R.S.

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

The Department of Revenue does not have a form or other standard mechanism to allow for taxpayers to report the Occasional Sales of Liquor by Public Auction Exemption. Although statute requires taxpayers to report “records of all transactions” to which they applied the exemption, it does not specifically require the Department to create a reporting process. If the Department of Revenue created a reporting mechanism, such as a form, to facilitate the required reporting of sales subject to the exemption, some taxpayers may be more likely to report them if any are occurring, which would allow us to more reliably evaluate how frequently they occur, if at all. However, this may not be a cost-effective use of state resources since the Department of Revenue does not know of any sales that qualify for this exemption and creating a form would require additional staff time and resources (see the Tax Expenditures Overview section of this Compilation Report for details on the limitations of the Department of Revenue data and the potential costs of addressing these limitations).

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly could consider repealing this exemption since it does not appear that taxpayers are using it. However, if applicable sales occur in the future, the exemption may ease the administrative burden on buyers and sellers as intended.