

# Legislation Is Brewing That Would Reduce Excise Taxes for Brewers & Simplify Inventory and Labeling Rules

## Article #11 of Hopping on the Brewery Bandwagon Series

Proposed legislation designed to support the continued growth of the craft beverage industry may reduce the tax burden on brewers large and small through a revised federal excise tax scheme. The [Craft Beverage Modernization and Tax Reform Act of 2015](#) (the Wyden Bill) recently introduced by Oregon Senator Ron Wyden—the latest in a line of proposed legislation to revise excise tax rates—would lower the tax rate on the first six million barrels for all beer brewers, and dramatically slash the rate for small breweries producing less than two million barrels annually. In addition to easing excise taxes, the Wyden Bill would also revise and simplify label approval rules and beer inventory rules for brewers.

## Beer Excise Taxes

The current federal beer excise tax is \$18 per barrel (31 gallons). The existing rules provide an exception for small breweries with annual production of 2 million barrels or less, taxing the first 60,000 barrels produced each year at \$7 per barrel. Bills to reduce excise taxes have been kicked around Congress for several years without passage, alternately drawing support from the small and craft brewery-focused Brewers Association, and the industry's broader trade group, the Beer Institute. Prior to the Wyden Bill, 2015 had already seen the introduction of both the Small Brewer Reinvestment and Expanding Workforce Act ("Small BREW Act"), endorsed by the Brewers Association, and the Fair Brewers Excise and Economic Relief Act of 2015 ("Fair BEER Act"), supported by the Beer Institute.

The Small BREW Act, as its name implies, focuses on smaller breweries with annual production of six million barrels or less. For those smaller breweries, the excise tax would be reduced to \$3.50 per barrel on the first 60,000 barrels, and \$16 per barrel from 60,000 barrels to 2 million barrels. On the other hand, the Fair BEER Act, co-sponsored in the Senate by Wisconsin Senator Tammy Baldwin, contains no distinction between small and large breweries, instead proposing across-the-board reductions in excise taxes. Under the Fair BEER Act, the first 7,143 barrels produced annually by any sized brewery would not be subject to

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any excise tax. Barrels between 7,144 and 60,000 would be taxed at only \$3.50 per barrel, and \$16 per barrel up to 2 million barrels.

The Wyden Bill strikes a compromise between the previous proposals on tax relief, and has garnered the endorsement of both [the Brewers Association](#) and [the Beer Institute](#). The legislation proposes a reduced excise tax of \$16 per barrel on the first 6 million barrels for all brewers and beer importers, regardless of size. Those domestic brewers that produce less than 2 million barrels annually would pay only \$3.50 per barrel on the first 60,000 barrels.

## **Additional Beer-Specific Provisions**

Along with reducing excise taxes on beer, the Wyden Bill contains three other beer-specific provisions affecting brewers of all sizes.

First, the Wyden Bill simplifies the label approval process under 27 CFR 25, which currently requires case-by-case formula approval by the Alcohol and Tobacco Tax and Trade Bureau ("TTB") for any ingredient not considered "traditional" in the production of beer. The bill provides that, for the purpose of label approvals, the "traditional process" includes the addition of any "wholesome fruits, vegetables, or spices suitable for human food consumption not containing alcohol and safe for use in an alcoholic beverage."

Second, the Wyden Bill eases inventory and recordkeeping restrictions that currently may require breweries to physically separate taxpaid beer inventory from non-taxpaid beer, as well as the separation of taxpaid beer to be sold at a brewpub from taxpaid beer to be sold wholesale. The bill proposes to allow common inventory and storage systems for any taxpaid beer produced by the brewer.

Finally, the Wyden Bill lifts the restriction on the transfer in bond of beer between two breweries. Under current law, beer may only be transferred in bond between two breweries owned by the same brewer, limiting the ability of distinctly-owned breweries to collaborate or share bottling and storage facilities. The Wyden Bill allows for the transfer in bond of beer between two breweries, regardless of ownership.

Along with cutting taxes and revising regulations for brewers, the Wyden Bill also contains provisions related to the production of hard cider, wine and distilled spirits. It remains to be seen whether the Wyden Bill will make more progress in Congress than either the Small BREW Act or the Fair BEER Act, but the support of



both major beer industry trade groups is a good sign. A bipartisan companion bill (H.R. 2903) was introduced in the House of Representatives this month by Reps. Erik Paulsen (R-MN) and Ron Kind (D-WI). If the Craft Beverage Modernization and Tax Reform Act becomes law, brewers—in particular, craft brewers—will see significant tax relief and the streamlining of complex regulations.

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